

United States
Circuit Court of Appeals

For the Ninth Circuit. 5

DOLLAR STEAMSHIP COMPANY, Claimant of,
and the STEAMSHIP "PRESIDENT COOL-
IDGE" her engines, boilers, machinery, tackle,
apparel and furniture,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Upon Appeal from the District Court for the
Territory of Hawaii.

FILED

JUN 20 1938

PAUL P. O'BRIEN,
CLERK

United States
Circuit Court of Appeals

For the Ninth Circuit.

DOLLAR STEAMSHIP COMPANY, Claimant of,
and the STEAMSHIP "PRESIDENT COOL-
IDGE" her engines, boilers, machinery, tackle,
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Appellants,

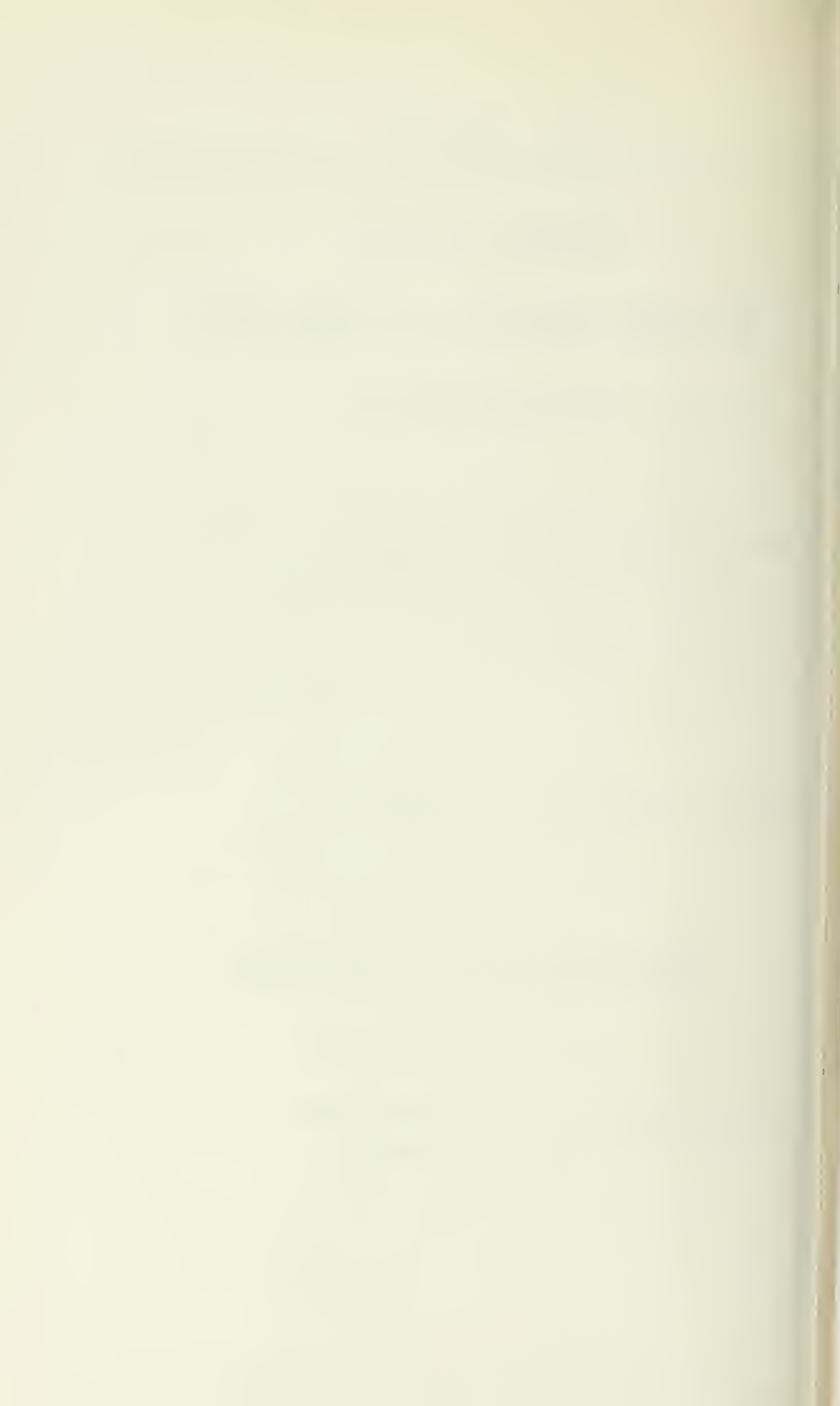
vs.

UNITED STATES OF AMERICA,

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD.

For the Libellant, The United States of America:

INGRAM M. STAINBACK, Esq.,

United States Attorney,

Federal Building, Honolulu, T. H.

J. FRANK McLAUGHLIN, Esq.,

Assistant United States Attorney,

Federal Building, Honolulu, T. H.

For the Libellee, The Steamship "President Coolidge," her engines, boilers, machinery, tackle, apparel and furniture:

THOMPSON, WOOD & RUSSELL,

Inter-Island Building, Honolulu, T. H. [1*]

*Page numbering appearing at the foot of page of original certified Transcript of Record.

In the United States District Court for the Territory of Hawaii.

Libel in Rem Admiralty No. 296.

THE UNITED STATES OF AMERICA,
Libellant,

vs.

THE STEAMSHIP "PRESIDENT COOLIDGE", her engines, boilers, machinery, tackle, apparel and furniture,
Libellee.

CLERK'S STATEMENT.

Time of Commencing Suit:

August 26, 1937—Libel filed.

Names of Original Parties:

The United States of America, Libellant.

The Steamship "President Coolidge", her engines, boilers, machinery, tackle, apparel and furniture, Libellee.

Date of Filing Pleadings:

August 26, 1937—Libel.

September 3, 1937—Claim.

October 26, 1937—Answer.

Date of Filing Decree:

March 21, 1938—Decree filed.

Times When Proceedings Were Had:

August 26, 1937—Re Order Fixing Amount of Bond.

February 15, 1938—Order Setting Case for Trial.

March 17, 1938—At Trial.

March 21, 1938—Allowing Costs. Decree. [2]

Proceedings in the Above Entitled Matter were had before the

Honorable Edward M. Watson, District Judge.

Dates of Filing Appeal Documents:

Notice of and Petition for Appeal—April 4, 1938.

Assignment of Errors—April 4, 1938.

Order Allowing Appeal—April 4, 1938.

Citation on Appeal Issued—April 4, 1938.

Praecipe—April 6, 1938.

CERTIFICATE OF CLERK AS TO THE
ABOVE STATEMENT.

The United States of America,
Territory of Hawaii—ss:

I, Wm. F. Thompson, Jr., Clerk of the United States District Court for the Territory of Hawaii, do hereby certify the foregoing to be a full, true and correct statement showing the time of commencement of the above-entitled cause; the names of the original parties, the several dates when the respective pleadings were filed; the time when proceedings were had and the name of the Judge presiding; the date of the filing of the decision and date when appeal documents were filed and issued in the above-entitled cause.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court, this 16th day of May A. D. 1938.

[Seal] WM. F. THOMPSON, JR.,
Clerk, U. S. District Court, Territory of Hawaii. [3]

[Title of District Court and Cause.]

LIBEL.

(Violation of Secs. 407, 411 & 412, Title 33,
United States Code.) [4]

To the Honorable, the Presiding Judge of the above entitled Court:

This Libel of Information by Ingram M. Stainback, United States Attorney for the District of Hawaii, prosecuting for the said United States of America in this behalf, in the name and on behalf of the United States of America against the Steamship "President Coolidge", her engines, boilers, machinery, apparel and furniture, in a cause of seizure, alleges and informs as follows:

Article One

That said vessel is now lying in the Port of Honolulu, Territory of Hawaii, in public, navigable waters of the United States, within the admiralty and maritime jurisdiction of the United States, and of this Court.

Article Two

That said vessel on the 26th day of August, 1937, while in the navigable waters of the United States,

to-wit, Honolulu Harbor, Territory of Hawaii, was used and employed in violating the provisions of Section 407 of Title 33 of the United States Code in the following manner, to-wit: that during the forenoon of said date, at the place aforesaid, refuse matter, to-wit: garbage consisting of celery, oranges, tea leaves, etc., was thrown, discharged and deposited [5] from or out of said vessel into the navigable waters of the United States, to-wit: Honolulu Harbor, Territory of Hawaii.

Article Three

That by reason of the foregoing matter hereinbefore set forth in Article Two, a penalty of not to exceed Twenty-five Hundred Dollars (\$2500.00), nor less than Five Hundred Dollars (\$500.00) was incurred, said penalty becoming by virtue of Section 412, Title 33, United States Code, a lien upon and against the above named vessel.

Article Four

That all and singular the premises aforesaid are and were true and within the admiralty and maritime jurisdiction of the United States and this Honorable Court.

Wherefore, the said Ingram M. Stainback, United States Attorney for the District of Hawaii, on behalf of the United States, prays the usual process and monition against said vessel, the Steamship "President Coolidge", her engines, boilers, machinery, tackle, apparel and furniture, in this behalf to be made, and that all persons concerned in in-

terest in said vessel, her engines, boilers, machinery, tackle, apparel and furniture, may be cited to appear and answer the premises, and that this Honorable Court may be pleased to decree for the penalty aforesaid, and that said vessel may be condemned and sold to pay the penalty aforesaid, with costs, and for such other and further relief as shall to law and justice appertain.

Dated: Honolulu, T. H., this 26th day of August, 1937.

THE UNITED STATES OF AMERICA,
Libellant.

By (s) INGRAM M. STAINBACK,
United States Attorney, District of Hawaii.

[Endorsed]: Filed August 26, 1937. [6]

[Title of District Court.]

MONITION.

The President of the United States of America
To the Marshal of the United States of America
for the Territory of Hawaii—Greeting:

Whereas, a Libel of Information hath been filed in the District Court of the United States for the Territory of Hawaii, on the 26th day of August, A. D. 1937, by Ingram M. Stainback, Esq., Attorney of the United States for the Territory of Hawaii, in the name and in behalf of the United States of America, against The Steamship "President Cool-

idge", her engines, boilers, machinery, tackle, apparel and furniture, for the reasons and causes in the said Libel of Information mentioned, and praying the usual process and monition of the said Court in that behalf to be made, and that all persons interested in the said Steamship "President Coolidge", her engines, boilers, machinery, tackle, apparel and furniture, may be cited in general and special, to answer the premises, and all proceedings being had that the said Steamship "President Coolidge", her engines, boilers, machinery, tackle, apparel and furniture, may for the causes in the said Libel of Information mentioned, be condemned and sold to pay the demands of the United States of America.

You Are Therefore Hereby Commanded to attached the said Steamship "President Coolidge", her engines, boilers, machinery, tackle, apparel and furniture, and to detain the same in your custody until the further order of the Court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said Libel of Information, that they be and appear before the said Court, to be held in and for the Territory of Hawaii, on Friday the 3rd day of September, A. D. 1937, at 2 o'clock in the afternoon of the same day, if the same day shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to

make their allegations on that behalf. And what you shall have done in the premises, do you then and there make return thereof, together with this writ.

Witness, the E. M. Watson, Judge of said Court, at the City of Honolulu, in the Territory of Hawaii, this 26th day of August, A. D. 1937, and of our Independence the one hundred and sixty-second.

WM. F. THOMPSON, JR.

Clerk.

By (s) E. LANGWITH

Deputy Clerk.

(s) INGRAM M. STAINBACK

U. S. Attorney, District of Hawaii. [7]

[Title of District Court.]

STIPULATION.

Entered into in pursuant to the Rules of Practice of this Court.

Whereas, a Libel was filed on the 26th day of August in the year of our Lord one thousand nine hundred thirty-seven by the United States of America, Libellant against the Steamship "President Coolidge," her engines, boilers, etc., for the reasons and causes in the said Libel mentioned; And whereas the Steamship "President Coolidge," her engines, etc., in the custody of the United States Marshal, under the process issued in pursuance of the prayer of said libel, and whereas the said Steam-

ship "President Coolidge," her engines, etc., has been claimed by K. A. Ahlin, as Master; And, whereas, it has been stipulated that said Steamship "President Coolidge," her engines, etc., may be released from arrest upon the giving and filing of an Admiralty Stipulation in the sum of One Thousand and No./100 Dollars, as appears from said stipulation now on file in said Court; And the parties hereto hereby consenting and agreeing that, in case of default or contumacy on the part of the claimant or their sureties, execution for the above amount may issue against their goods, chattels and lands:

Now, Therefore, the condition of this Stipulation is such, that if the Stipulators undersigned, shall at any time, upon the Interlocutory or final order or Decree of the said District Court, or of any Appellate Court to which the above named suit may proceed, and upon notice of such Order or Decree, to Frank [8] E. Thompson, Esquire, Proctor for the Claimant of said Steamship "President Coolidge," her engines, etc., abide by and pay the money awarded by the final Decree rendered by the Court of the Appellate Court if any appeal intervene,

then this Stipulation to be void, otherwise to remain in full force and virtue.

(s) K. A. AHLIN

As Master

UNITED STATES FIDELITY AND
GUARANTY COMPANY

By (s) HERMAN LUIS (Seal)

Attorney in Fact.

Taken and acknowledged this 26th day of August, 1937, before me,

(s) WM. F. THOMPSON, JR.

Clerk, United States District Court. [9]

[Title of District Court and Cause.]

ORDER OF RELEASE.

To the United States Marshal, Hawaii:

You are hereby notified that pursuant to Section 941 R. S. U. S. a bond in the sum of \$1,000.00 for the release of the above named vessel was on this day filed, and you are therefore directed to release the said vessel forthwith.

Dated: Honolulu, T. H., August 26th, 1937.

WM. F. THOMPSON, JR.,

Clerk.

By THOS. P. CUMMINS, (s)

Deputy Clerk. [10]

United States Marshal's Office

Marshal's Return.

The within Order of Release was received by me on the 26th day of August, A. D. 1937, and is re-

turned executed this 26th day of August, A. D. 1937 by releasing the S.S. "President Coolidge" her engines, tackle, apparel, etc.

(s) OTTO F. HEINE,
United States Marshal.

Dated at Honolulu, T. H., this 26th day of August,
A. D. 1937.

Marshal's Civil Docket.

No. 2154.

Court No. 296.

Fees \$2.00.

Expenses

Total \$2.00.

[Endorsed]: Filed Aug. 27, 1937.

[Title of District Court and Cause.]

CLAIM OF AGENT ON BEHALF OF OWNER

To the Honorable, the Presiding Judge of the above
entitled Court:

And now Stanley W. Good, intervening as agent for the interest of Dollar Steamship Lines Incorporated, Limited, a corporation, in the libel heretofore filed herein, appears before the Honorable Court, and makes claim to the said The Steamship "President Coolidge", her engines, boilers, machinery, Tackle, apparel and furniture, as the same were heretofore attached by the Marshal under process of this Court, and released upon the filing of a Stipulation entered into *in* pursuant to the Rules of Practice of this Court, upon the Libel of

information of The United States of America, Libellant, and the said Stanley W. Good avers that said The Steamship "President Coolidge", her engines, etc., were in possession of the said Dollar Steamship Lines Incorporated, Limited, at the time of the attachment thereof, and that the corporation above named was and now is the true and bona fide owner of the said The Steamship "President Coolidge", her engines, etc., and that no other person is the owner thereof; [12] and the said Stanley W. Good is the true and lawful bailee thereof as agent, wherefore he prays to defend accordingly.

Dated: Honolulu, T. H., this 3rd day of September, 1937.

(s) STANLEY W. GOOD

Agent for Dollar Steamship Lines
Incorporated, Limited, Claimant

THOMPSON, WOOD & RUSSELL

By (s) A. G. BOWMAN

Proctors for Claimant

The United States of America,
District of Hawaii.

Stanley W. Good, being duly sworn, deposes and says that he resides in Honolulu, City and County of Honolulu, Territory of Hawaii; that he is the agent of the Dollar Steamship Lines Incorporated, Limited, claimant above named; that the owner of said The Steamship "President Coolidge", her engines, etc., has its principal place of business in the City and County of San Francisco, State of California; that this deponent is duly authorized to put in this claim in behalf of the owner of the said The

Steamship "President Coolidge", her engines, etc., and that the said claim is true to the knowledge of this deponent, except as to the matters therein stated on information and belief, and as to such matters he believes it to be true.

(s) STANLEY W. GOOD

Subscribed and sworn to before me this 3rd day of September, 1937.

(s) RITCHIE G. ROSA

Notary Public, First Judicial Circuit
Territory of Hawaii

Due service by copy of the within Claim is hereby admitted.

(s) J. F. McLAUGHLIN

Ass't Attorney for Libellant
Honolulu, Hawaii

September 3rd, 1937.

[Endorsed]: Filed September 3, 1937. [13]

[Title of District Court and Cause.]

ANSWER

To the Honorable, the Presiding Judge of the above entitled Court:

The Answer of Dollar Steamship Lines, Inc., Ltd., a corporation, owner and claimant of The Steamship "President Coolidge", her engines, boilers, machinery, tackle, apparel and furniture as the same is proceeded against in the Libel of Information of the United States of America in an alleged cause of seizure, alleges as follows:

I.

Claimant admits that when the Libel was filed herein, the said The Steamship "President Coolidge" was in the port of Honolulu and within the jurisdiction of this Honorable Court as alleged in Article One of the Libel.

II.

Claimant denies allegations of Article Two of the Libel. [15]

III.

Claimant denies the allegations of Article Three of the Libel.

IV.

Claimant denies the allegations of Article Four of the Libel, except that claimant admits the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

V.

That all and singular the premises are true.

Wherefore, claimant prays that the Libel herein be dismissed with costs.

Dated: Honolulu, T. H., this 26th day of October, 1937.

DOLLAR STEAMSHIP LINES,
INC., LTD.

Claimant herein

THOMPSON, WOOD & RUSSELL

By (s) FRANK E. THOMPSON

Its Proctors [16]

The United States of America,
District of Hawaii—ss.

Frank E. Thompson, being first duly sworn on oath deposes and says:

That he is one of the Proctors for Dollar Steamship Lines, Inc., Ltd., owner and claimant of The Steamship "President Coolidge", her engines, boilers, machinery, tackle, apparel and furniture and as such makes this verification for it by its authority and on its behalf; that said owner and claimant has its principal place of business in the City and County of San Francisco, State of California; that the reason this verification is made by your affiant is that there is no officer of the owner and claimant within the jurisdiction of this Honorable Court, and your affiant has special knowledge of the facts upon which the foregoing Answer is based; that he has read said Answer, knows the contents thereof, and that the same is true to the best of his knowledge, information and belief.

(s) FRANK E. THOMPSON

Subscribed and sworn to before me this 26th day of October, 1937.

[Seal]

(s) J. NOGUCHI

Notary Public, First Judicial Circuit,
Territory of Hawaii

Due service by copy of the within Answer is hereby admitted.

(s) J. F. McLAUGHLIN

Attorneys for *Asst. U. S. Atty.*
Honolulu, Hawaii

October 26, 1937.

[Endorsed]: Filed October 26, 1937. [17]

[Title of District Court and Cause.]

NOTICE OF TAKING DEPOSITION
DE BENE ESSE.

To Ingram M. Stainback, United States Attorney,
District of Hawaii:

Please take notice that Dollar Steamship Lines, Inc., Ltd., claimant herein, will take in the above-entitled action, to be used upon the trial thereof, the deposition of Dale E. Collins, master of the SS "President Harrison", before G. Frank Dougherty, a notary public duly commissioned and sworn, and qualified to act in and for the County of New York, State of New York, who is not of counsel or attorney for either of the parties to nor interested in this cause, or before some other officer authorized by law to take depositions, on the 13th day of January, 1938, at the hour of 10:00 o'clock in the forenoon of that day, and thereafter from day to day until the examination is completed, at the office of Thompson & Hunt, at 67 Broad Street in the City of New York, State of New York, [19] at which time and place you are hereby notified to appear and take such part in said examination as you may be advised, and as shall be fit and proper.

The ground for taking this deposition is that the said witness resides more than one hundred miles from the place of trial herein, as provided for by

Section 639 of Title 28, of the United States Code.

Dated: Honolulu, T. H., this 16th day of December, 1937.

THOMPSON, WOOD & RUSSELL,
(s) FRANK E. THOMPSON,

Proctors for Dollar Steamship Lines,
Inc., Ltd., Claimant herein, Fifth Floor
Inter-Island Bldg., Honolulu, T. H.

Service of the above notice admitted this 16th day of December, 1937.

(s) J. F. McLAUGHLIN,
Ass't United States Attorney, District
of Hawaii.

[Endorsed]: Filed December 16, 1937. [20]

[Title of District Court and Cause.]

SPECIAL FINDINGS OF FACT AND CON-
CLUSIONS OF LAW IN CONFORMITY
WITH ADMIRALTY RULE 46 $\frac{1}{2}$.

This cause having come on regularly for trial before me upon the pleadings filed by the respective parties and the allegations and proofs on behalf of the parties having been heard and considered, now therefore, the court finds the facts as follows:

Special Findings of Fact.

(1) That the Steamship "President Coolidge" was on August 26, 1937 in Honolulu Harbor, Oahu, Territory of Hawaii.

(2) That the waters of said harbor are navigable waters of the United States.

(3) That on August 26, 1937, there was thrown from the Steamship "President Coolidge" into the navigable waters of said Honolulu Harbor garbage consisting in part of orange skins, celery, and tea leaves.

Conclusions of Law.

From the foregoing facts the Court concludes as a matter of law:

1. That the material thrown from the Steamship "President Coolidge" on August 26, 1937, into the waters of Honolulu Harbor was "refuse matter" within the meaning of 33 U. S. C. Section 407.

2. That at the time said refuse matter was thrown from said Steamship "President Coolidge" into Honolulu Harbor said vessel was [22] within the admiralty and maritime jurisdiction of this Court.

3. That when on August 26, 1937 said refuse matter was thrown from said vessel into the navigable waters of Honolulu Harbor, said vessel was a vessel "used or employed" in a violation of 33 U. S. C. Section 407 within the meaning of 33 U. S. C. Section 412 because 33 U. S. C. Sections 407, 411 and 412 must be construed together in terms of the remedy sought to be accomplished by said congressional enactments.

4. That the Steamship "President Coolidge" is therefore liable for a pecuniary penalty in accordance with the provisions of 33 U. S. C. Section 412.

A Decree in conformity herewith will be signed upon presentation.

Dated: Honolulu, T. H., this 21st day of March, 1938.

(s) EDWARD M. WATSON,
Judge, U. S. District Court for the Territory
of Hawaii.

Receipt is hereby acknowledged of a copy of the within this 21st day of March, 1938.

THOMPSON, WOOD & RUSSELL,
By A. G. BOWMAN.

[Endorsed]: Filed March 21, 1938. [23]

In the United States District Court for the
Territory of Hawaii.
October Term 1937.

Libel in rem Adm. No. 296

THE UNITED STATES OF AMERICA,
Libellant,
vs.

THE STEAMSHIP "PRESIDENT COOL-
IDGE", her engines, boilers, machinery, tackle,
apparel and furniture,
Libellee.

DECREE.

This cause having come on regularly for trial on March 17, 1938, before the Honorable Edward M. Watson, Judge of the above entitled court, upon the

pleadings filed by the respective parties and the allegations and proofs on behalf of the parties having been heard and considered, and the court having orally rendered its decision in this cause on March 17, 1938, and on the 21st day of March, 1938, in accordance with Admiralty Rule 46 $\frac{1}{2}$, having filed its Special Findings of Fact and Conclusions of Law, now therefore, upon the motion of Ingram M. Stainback, United States Attorney, proctor for the libellant, it is hereby

Ordered, adjudged and decreed by the court that the libellant, the United States of America, recover from the libellee, The Steamship "President Coolidge", her engines, boilers, machinery, tackle, apparel and furniture, as a penalty, the sum of Five Hundred Dollars (\$500.00), together with all costs of this suit, which are hereby taxed in the sum of Thirty-seven Dollars and Sixty-five Cents (\$37.65);

And it appearing to the court that the libellee, The Steamship "President Coolidge", her engines, boilers, machinery, tackle, apparel, and furniture, has been released to the Dollar Steamship Lines, Inc., Limited, owner and claimant in this cause, upon a Stipulation for value in the sum of One Thousand Dollars (\$1,000.), dated August 26, 1937, signed by K. A. Ahlin, Master of said vessel, on behalf of her owner and claimant, with the United States Fidelity and Guaranty Company, as surety, conditioned [25] that said principal and surety shall abide by and perform the decree of this court, it is hereby further

Ordered, adjudged and decreed that unless this decree shall be satisfied or proceedings thereon stayed by appeal, within ten (10) days after notice given by the proctor for the libellant to the proctors for the libellee and said claimant of the entry of this decree and the taxation of costs herein, the said surety, the United States Fidelity and Guaranty Company, shall cause the engagements of its Stipulation to be performed, or show cause within five (5) days after the expiration of said period of ten (10) days why execution should not issue against it, its lands, goods and chattels, according to said Stipulation to satisfy this decree.

Dated: Honolulu, T. H., March 21st, 1938.

(s) EDWARD M. WATSON,

Judge,

United States District Court for the
Territory of Hawaii.

Approved as to Form:

INGRAM M. STAINBACK,

United States Attorney, District of Hawaii.

By (s) J. FRANK McLAUGHLIN,

Asst. U. S. Attorney, District of Hawaii.

Proctor for Libellant.

(s) J. P. RUSSELL,

THOMPSON, WOOD & RUSSELL,

Proctors for Libellee & Claimant.

Receipt of a copy of the within is hereby acknowledged this 19th day of March, 1938.

THOMPSON, WOOD & RUSSELL,

By (s) A. G. BOWMAN.

[Endorsed]: Filed March 21, 1938. [26]

[Title of District Court and Cause.]

NOTICE OF FILING DECREE.

To: Thompson, Wood & Russell, proctors for the Libelee, the Steamship "President Coolidge" and for the Dollar Steamship Lines, Inc., Limited, claimant in the above entitled matter.

You will please take notice that on the 21st day of March, 1938, there was duly filed in the office of the Clerk of the United States District Court for the Territory of Hawaii in the above entitled matter a Decree, a true copy of which is hereto attached and made a part hereof.

Dated: Honolulu, T. H., the 21st day of March, 1938.

INGRAM M. STAINBACK

United States Attorney

District of Hawaii

By (s) J. FRANK McLAUGHLIN

Asst. United States Attorney

District of Hawaii.

Receipt is hereby acknowledged of a copy of the within this 22nd day of March, 1938.

THOMPSON, WOOD & RUSSELL

By (s) A. G. BOWMAN

[Endorsed]: Filed March 22, 1938 [28]

[Title of District Court and Cause.]

NOTICE OF AND MOTION FOR APPEAL.

To the Honorable, the Presiding Judge of the
Above Entitled Court:

The Steamship "President Coolidge", libellee above named, and Dollar Steamship Lines, Inc., Ltd., claimant, conceiving themselves aggrieved by the decree in the above entitled cause entered on the 21st day of March, 1938, do hereby appeal from the said decree to the Circuit Court of Appeals for the Ninth Judicial Circuit of the United States of America, for the reasons set forth in the assignment of errors to be filed herein, and pray that their appeal be allowed and that citation be issued as provided by law, and that a transcript of the record of all proceedings and papers upon which said decree was made, duly authenticated, may be sent to the Circuit Court of Appeals for the Ninth Judicial Circuit, for the United States of America.

Dated: Honolulu, T. H., this 1st day of April, 1938.

THE STEAMSHIP "PRESIDENT COOLIDGE", libelee, and Dollar Steamship Lines, Inc., Ltd., claimant,

By THOMPSON, WOOD & RUSSELL

(s) J. P. RUSSELL

Their Proctors.

Due service, by copy of the within Notice of and Petition for Appeal is hereby admitted.

(s) J. F. McLAUGHLIN

Asst. U. S. Atty.

Attorneys for.....

Honolulu, Hawaii

April 1, 1938.

[Endorsed]: Filed April 1, 1938. [30]

[Title of District Court and Cause.]

ASSIGNMENT OF ERRORS.

Come now The Steamship "President Coolidge", libellee, and the Dollar Steamship Lines, Inc., Ltd., claimant in the above entitled cause and file the following assignment of errors upon which they will rely in the prosecution of the appeal herewith petitioned for from the decree of this court, entered on the 21st day of March, 1938.

Assignment No. 1.

The court erred in rendering a decree in favor of the libellant.

Assignment No. 2.

The court erred in overruling the oral motion to dismiss entered by the libellee in this cause.

Assignment No. 3.

The court erred in decreeing that the libellant, The United States of America, recover from the

libellee, The Steamship "President Coolidge", her engines, boilers, machinery, [32] tackle, apparel, and furniture, as a penalty, the sum of \$500.00.

Assignment No. 4.

The Court erred in ordering that the libellant, the United States of America, recover from the libellee, The Steamship "President Coolidge", the cost of these proceedings, taxed in the sum of \$37.65.

Assignment No. 5.

The court erred in finding as a fact from the evidence presented that on August 26th, 1937, there was thrown from The Steamship "President Coolidge" into the navigable waters of Honolulu harbor garbage consisting in part of orange skins, celery and tea-leaves.

Assignment No. 6.

The court erred in not finding as a special finding of fact that the refuse thrown from The Steamship "President Coolidge" fell entirely upon the witness, Arthur, and in the boat operated by him and that, therefore, none of the said refuse matter was thrown into the navigable waters of Honolulu harbor.

Assignment No. 7.

The court erred in finding as a conclusion of law from the evidence introduced herein that when on August 26th, 1937, said refuse matter was thrown from said vessel into the navigable waters of Hono-

lulu harbor, said vessel was a vessel "used or employed" in a violation of 33 U. S. C., Section 407 within the meaning of 33 U. S. C., Section 412.

[33]

Assignment No. 8.

That the court erred in not finding as a conclusion of law from the evidence introduced herein that when on August 26th, 1937, said refuse matter was thrown from said vessel that said vessel was not a vessel "used or employed" in a violation of 33 U. S. C., Section 407, within the meaning of 33 U. S. C., Section 412.

Assignment No. 9.

That the court erred in finding as a conclusion of law from the evidence introduced herein that The Steamship "President Coolidge" is liable for a pecuniary penalty in accordance with the provisions of 33 U. S. C., Section 412.

Wherefore, libellee and claimant pray that the said decree may be reversed, and for such other and further relief as to the court may seem just and proper.

Dated: Honolulu, T. H., this 1st day of April, 1938.

THE STEAMSHIP "PRESIDENT COOLIDGE", libellee, and Dollar Steamship Lines, Inc., Ltd., claimant,

By THOMPSON, WOOD & RUSSELL

(s) J. P. RUSSELL

Their Proctors.

Due service, by copy of the within Assignment of Errors is hereby admitted.

(s) J. F. McLAUGHLIN

Ass't U. S. Atty.

Honolulu, Hawaii

April 1, 1938.

[Endorsed]: Filed April 1, 1938. [34]

[Title of District Court and Cause.]

ORDER ALLOWING APPEAL

Upon the application of The Steamship "President "Coolidge", libellee, and Dollar Steamship Lines, Inc., Ltd., claimant herein, and upon the petition of their proctors, Thompson, Wood & Russell, it is hereby ordered that the notice of and petition for appeal heretofore filed and entered herein by libellee and claimant, be and the same is hereby granted; and that an appeal to the United States Circuit Court of Appeals for the Ninth Judicial Circuit from the decree heretofore on the 21st day of March, 1938, be and the same is hereby allowed; and that a transcript of the record of all proceedings and papers upon which the decree was made, duly certified and authenticated, be transmitted under the hand and seal of the clerk of this court to the United States Circuit Court of [36] Appeals

for the Ninth Judicial Circuit of the United States of America, at Honolulu, Territory of Hawaii.

Dated: Honolulu, T. H., this 1st day of April, 1938.

(s) EDWARD M. WATSON

Judge of the above entitled Court

[Endorsed]: Filed April 1, 1938. [37]

[Title of District Court and Cause.]

CITATION ON APPEAL

The United States of America—ss.

The President of the United States of America,

To: The United States of America and to Ingram
M. Stainback, United States Attorney for
the Territory of Hawaii: Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Judicial Circuit of the United States of America, in the City and County of San Francisco, State of California, ~~Honolulu, Territory of Hawaii,~~ [W.F.T.] within thirty (30) days from the date of this writ, pursuant to an order allowing an appeal, filed in the clerk's office of the United States District Court for the Territory of Hawaii, wherein you are the libellant and The Steamship "President Coolidge" [39] is the libellee, to show cause, if any there be, why the decree in said appeal mentioned should not be corrected and speedy justice should not be done to the parties on that behalf.

Witness the Honorable Charles Evans Hughes,
Chief Justice of the Supreme Court of the United
States of America, this 1st day of April, 1938.

(s) EDWARD M. WATSON

Judge,

United States District Court,
Territory of Hawaii

(s) WM. F. THOMPSON, JR.

Clerk,

United States District Court,
Territory of Hawaii

Received a copy of the within citation.

INGRAM M. STAINBACK

United States Attorney,
District of Hawaii

By (s) J. FRANK McLAUGHLIN

Asst. United States Attorney
District of Hawaii [40]

[Title of District Court and Cause.]

PRAECIPE

To: The Clerk of the above entitled Court:

You will please prepare Apostles on Appeal in
this cause, to be filed in the office of the Clerk of
the United States Circuit Court of Appeals for the
Ninth Judicial Circuit, said Apostles to be in con-
formity with Rule IV, Subdivision (1) of the Ad-
miralty Rules of said court, and include in said

Apostles copies of the following pleadings, proceedings and papers on file, to-wit:

1. Libel and Monition, filed August 26th, 1937.
2. Stipulation, dated August 26th, 1937.
3. Order of Release, dated August 26th, 1937.
4. Claim of Agent on Behalf of Owner, filed September 3rd, 1937.
5. Answer, filed October 26th, 1937.
6. Notice of Taking Deposition, filed December 16th, 1937. [42]
7. Special Findings of Fact and Conclusions of Law, dated March 21st, 1938.
8. Decree, dated March 21st, 1938.
9. Notice of Filing Decree, dated March 21st, 1938.
10. Transcript of Testimony.
11. Clerk's minutes.
12. All original exhibits introduced in evidence.
13. Notice of and Petition for Appeal.
14. Assignment of Errors.
15. Order Allowing Appeal.
16. Citation on Appeal.
17. This Praecipe.

Dated: Honolulu, T. H., this 5th day of April, 1938.

THE STEAMSHIP "PRESIDENT
COOLIDGE" and Dollar Steamship
Lines, Inc., Ltd.,

Libellee and claimant respectively,
By THOMPSON, WOOD & RUSSELL
Their Proctors

Due service by copy of the within Praeceptum is hereby admitted.

(s) J. F. McLAUGHLIN

Asst. U. S. Atty.

Honolulu, Hawaii

April 6, 1938.

[Endorsed]: Filed April 6, 1938. [43]

PROCEEDINGS RE ORDER FIXING
AMOUNT OF BOND

From the Minutes of the United States District
Court for the Territory of Hawaii
Thursday, August 26, 1937.

[Title of District Court and Cause.]

Personally appeared Mr. J. F. McLaughlin, Assistant United States Attorney, who asked that bond be fixed in the above entitled case. The Court fixed bond at \$1,000.00. [44]

PROCEEDINGS RE ORDER SETTING
CASE FOR TRIAL

From the Minutes of the United States District
Court for the Territory of Hawaii
Tuesday, February 15, 1938.

[Title of District Court and Cause.]

By agreement of counsel this case was set for trial on March 17, 1938 at 10 o'clock a. m. [45]

PROCEEDINGS AT TRIAL

From the Minutes of the United States District
Court for the Territory of Hawaii

Thursday, March 17, 1938.

[Title of District Court and Cause.]

On this day came Mr. J. F. McLaughlin, counsel for the libellant herein, and also came Mr. J. P. Russell and Mr. A. G. Bowman, of the firm of Thompson, Wood & Russell, counsel for the libellee. This case was called for trial. Mr. McLaughlin made the opening statement on behalf of the government. It was stipulated the Master of the SS "President Coolidge" might be called out of turn. Carl Albert Ahlin, Master of the SS "President Coolidge", was called and sworn and testified on behalf of the libellee. Norman R. Arthur, Boatman, U. S. Engineers, was called and sworn and testified on behalf of the libellant. Philip D. Funes, of the Coast Guard Service, was called and sworn and testified on behalf of the libellant. At 11:55 a. m. the Court ordered that this case be continued to 2 p. m. this day. At 2:22 p. m. Mr. Bowman made an oral motion to dismiss the libel. This motion was denied by the Court and an exception noted. Charles B. Gjedsted, third officer, SS "President Coolidge", was called and sworn and testified on behalf of the libellee. It was stipulated that if Dennis S. Holler and Frank J. Wood, second officer and first officer, respectively, of the SS "President Coolidge" were called they would testify that the

steamship company issued instructions, and the captain gave instructions regarding the disposal of rubbish, etc., while in port and notice in English and Chinese was posted and oral orders were given that no rubbish, etc., should be thrown overboard. [46] William Allen Dougen, chief engineer, SS "President Coolidge", was called and sworn and testified on behalf of the libellee. Libellee's Exhibit No. 1, copy of circular letter dated March 5, 1932, was admitted in evidence, marked and ordered filed. Alan L. Bissell, chief steward, SS "President Coolidge", was called and sworn and testified on behalf of the libellee. Libellee's Exhibit No. 2, copy of circular 197, steward's Department, dated July 8, 1936, was admitted in evidence, marked and ordered filed. Libellee's Exhibit No. 3, notice in English and Chinese, in frame, was admitted in evidence, marked and ordered filed. This exhibit was withdrawn and the English portion read into the record. Libellee's Exhibit No. 3, depositions as a whole, testimony of Dale E. Collins, was admitted in evidence, marked and order filed. The objections in the deposition were at this time waived by Mr. McLaughlin. Both sides rested. At 3:27 argument was had by Mr. McLaughlin. At 3:40 p. m. argument was had by Mr. Bowman on behalf of the libellee. At 3:55 p. m. argument on rebuttal was had by Mr. McLaughlin. The Court found that a technical violation had been committed. The Court found the libellee guilty as charged and ordered that the libellee pay a minimum fine in the amount

of \$500.00 with costs assessed. Counsel for the libellee noted an exception and gave notice of appeal. [47]

PROCEEDINGS ALLOWING COSTS.

From the Minutes of the United States District Court for the Territory of Hawaii.

Monday, March 21, 1938.

[Title of District Court and Cause.]

On this day came Mr. J. F. McLaughlin, Assistant United States Attorney, and also came Mr. J. P. Russell, of the firm of Thompson, Wood & Russell, counsel for the libellee. This case was called for hearing on a motion for taxation of costs. On motion of Mr. McLaughlin the item of \$2.00, United States Marshal's costs for service of release, was stricken. The clerk was ordered to delete said item and to change the total to \$37.65 and initial the change. The motion for taxation of costs in the sum of \$37.65 was allowed by the Court. The special findings of fact and conclusions of law was presented, signed and ordered filed. The decree was presented. The Clerk was ordered to change the amount of costs from \$39.65 to \$37.65 and initial the change. There being no objections as to form the decree was signed and ordered filed. Mr. Russell entered an exception to the Court's findings of fact and conclusions of law and to the decree as filed. Said exception was noted and allowed. The decree reads as follows:

“[Title of Cause.]”

DECREE.

This cause having come on regularly for trial on March 17, 1938, before the Honorable Edward M. Watson, Judge of [48] the above entitled court, upon the pleadings filed by the respective parties and the allegations and proofs on behalf of the parties having been heard and considered, and the court having orally rendered its decision in this cause on March 17, 1938 and on the 21st day of March, 1938, in accordance with Admiralty Rule 46½ having filed its Special Findings of Fact and Conclusions of law, now therefore, upon the motion of Ingram M. Stainback, United States Attorney, proctor for the libellant, it is hereby

Ordered, adjudged and decreed by the court that the libellant, the United States of America, recover from the libellee, The Steamship “President Coolidge”, her engines, boilers, machinery, tackle, apparel and furniture, as a penalty, the sum of Five Hundred Dollars (\$500.00), together with all costs of this suit, which are hereby taxed in the sum of Thirty-seven Dollars and Sixty-five Cents (\$37.65).

And it appearing to the court that the libellee, The Steamship “President Coolidge”, her engines, boilers, machinery, tackle, apparel and furniture, has been released to the Dollar Steamship Lines, Inc., Limited, owner and claimant in this cause, upon a Stipulation for value in the sum of One Thousand Dollars (\$1,000.), dated August 26, 1937, signed by K. A. Ahlin, Master of said vessel, on be-

half of her owner and claimant, with the United States Fidelity and Guaranty Company, as surety, conditioned that said principal and surety shall abide by and perform the decree of this court, it is hereby further

Ordered, adjudged and decreed that unless this decree shall be satisfied or proceedings thereon stayed by appeal, within ten (10) days after notice given by the proctor for the libellant to the proctors for the libellee and said claimant of [49] the entry of this decree and the taxation of costs herein, the said surety, the United States Fidelity and Guaranty Company, shall cause the engagements of its Stipulation to be performed, or show cause within five (5) days after the expiration of said period of ten (10) days why execution should not issue against it, its lands, goods and chattels, according to said Stipulation to satisfy this decree.

Dated: Honolulu, T. H., March 21st, 1938.

(s) EDWARD M. WATSON,

Judge

United States District Court for the
Territory of Hawaii.

Approved as to Form:

INGRAM M. STAINBACK,

United States Attorney, District of Hawaii.

By (s) J. FRANK McLAUGHLIN,

Asst. U. S. Attorney, District of Hawaii,

Proctor for Libellant.

(s) J. P. RUSSELL,

THOMPSON, WOOD & RUSSELL,

Proctors for Libellee & Claimant." [50]

Adm. 296.

LIBELLEE'S EXHIBIT No. 1.

Admitted in Evidence 3-17-38.

Dollar Steamship Lines, Inc. Ltd.
Erie Pier No. 9, Jersey City
New Jersey

Fourth Issue.

Circular Letter.

March 5th, 1932.

To: Masters, Chief Officers,
Ch. Engineers, Chief Stewards,
All Ships.

As you know, there is a strict law against the dumping overboard of any garbage and/or the pumping overboard of oil, bilge water, sludge, etc., into the waters of New York Harbor, and while tied up at any berth in New York, and any violation makes the ship subject to a heavy fine.

Although we have been sending warnings to all concerned aboard our ships, we are still receiving complaints from the Supervisor, New York Harbor, and on two recent ships the Company has had to pay a fine.

We are again handing the Chief Steward and the Chief Engineer of each ship, copy of Special Notice issued by the Supervisor, and we would suggest that same be posted in a conspicuous place in the galley and in the engine room.

In addition to posting this notice, the Chief Steward should handle the matter with his Number One Boy, instructing him that under no cir-

cumstances is garbage to be dumped overboard or thrown through port holes in the galley while in port, or while within New York Harbor limits, and requesting that he preach this gospel to the Chinese crew. Further, the Chief Steward should impress upon the mind of his No. 1 Boy that should this rule be violated and the ship made subject to a fine, that he, the No. 1 Boy will be held accountable to the Company for the amount of this fine, and any of his boys caught violating this rule will be discharged at Shanghai and will not be reemployed on any Dollar Line vessel.

The Chief Engineer, of course, will instruct all concerned in his department regarding the necessity of not pumping overboard any fuel oil, bilge water or sludge while within the prescribed limits of New York Harbor, and anyone found guilty of violating this rule will be dismissed from service with the Dollar Line.

Yours very truly,

DOLLAR STEAMSHIP LINES, INC., LTD.

By (s) J. L. LOUNSBERY.

Asst. read & returned.

W. A. D.

Copy posted.

JLL:JL [51]

Special Notice to Steamship Companies

Discharge of Refuse, Debris, Sludge, Acid, Oil or Similar Matter in New York Harbor or its Adjacent Waters Prohibited by Congress.

Provisions of United States law establishing penalties and offering rewards to informers.

(Extract from the Act of Congress approved June 29, 1888 (25 Stats. 209))

“Be it Enacted by the Senate and House of Representatives of the United States of America in Congress Assembled, That the placing, discharging, or depositing, by any process or in any manner, of refuse, dirt, ashes, cinders, mud, sand, dredgings, sludge, acid, or any other matter of any kind, other than that flowing from streets, sewers, and passing therefrom in a liquid state, in the tidal waters of the harbor of New York, or its adjacent or tributary waters, or in those of Long Island Sound, within the limits which shall be prescribed by the Supervisor of the Harbor, is hereby strictly forbidden, and every such act is made a misdemeanor, and every person engaged in or who shall aid, abet, authorize, or instigate a violation of this section, shall, upon conviction be punishable by fine or imprisonment, or both, such fine to be not less than two hundred and fifty dollars nor more than two thousand five hundred dollars, and the imprisonment to be not less than thirty days nor more than one year, either or

both united, as the judge before whom conviction is obtained shall decide, one-half of said fine to be paid to the person or persons giving information which shall lead to conviction of this misdemeanor.”

Not only is the discharge of the before-mentioned matter, including oil refuse, illegal in the waters of New York Harbor and Long Island Sound, and their tributary waters, but also the law forbids such deposits in their adjacent waters. Therefore,

1. Vessels leaving or entering port having on board an accumulated quantity of garbage or refuse, shall not discharge it overboard within 25 miles of Ambrose Channel Lightship.

2. Bilge water containing oil, is not to be pumped overboard within the same limits.

3. Ballast water carried in fuel-oil tanks, is to be discharged as far offshore as is consistent with existing weather conditions, and the stability of the vessel.

Refuse not only obstruct waterways, but pollutes the beaches, creating a most unsanitary condition, and a consequent menace to public health. [52]

Your attention is therefore invited to the foregoing law and instructions, and you are urged to give your support toward preventing the acts prohibited. As you will perceive by the provision offering a reward of one-half of the fine imposed, information furnished by you may be to your profit. Any evidence you may have or may obtain con-

cerning violations of the law should be communicated to

The Supervisor of New York Harbor,
39 Whitehall Street,
New York City.

who is charged with the duty of seeing that offenders are promptly brought to punishment.

R. DRACE WHITE,
Captain, U. S. Navy,
Supervisor of New York Harbor. [53]

Adm. 296.

LIBELLEE'S EXHIBIT No. 2

Admitted in Evidence 3-17-38.

Steward Department
Circular 197
Amendment to Circular #193
July 8, 1936.

Dollar Steamship Lines, Inc.

Subject: Locking of Garbage Chutes.

To All Chief Stewards:

Please be advised that we are providing all garbage chutes with a hasp in order that they may be padlocked while ships are in various ports.

You are instructed to personally see that all chutes are locked before entering ports and not opened until the ship is fifty miles at sea when proceeding westward. Ships enroute to Los Angeles

are instructed not to dump garbage or refuse of any nature until well past Point Sur.

Yours very truly,

OHS

(Signed) O. H. SMITH. [54]

Adm. 296.

LIBELLEE'S EXHIBIT No. 3

Admitted in Evidence 3-17-38.

[Title of District Court and Cause.]

DEPOSITION ON BEHALF OF THE LIBELLE
LEE TAKEN IN NEW YORK, N. Y., JAN-
UARY 13, 1938.

FRANK L. STEVENS & CO.,

Shorthand Reporters,

2 Rector Street, New York.

Telephone: Whitehall 4-8638. [55]

Room 1001

67 Broad Street, New York

January 13, 1938

Deposition of witness on behalf of the Libellee, convening and commencing at the office of Sawyer Thompson, Esq., 67 Broad Street, New York City, at the hour of 10 o'clock A. M., pursuant to notice attached hereto, before G. Frank Dougherty, Esq., a

Notary Public for the State of New York, qualified to act in and for the County of New York.

Appearances

Thompson, Wood & Russell, by Sawyer Thompson, on behalf of the Libellee.

Lamar Hardy, United States Attorney for the Southern District of New York, by Thomas McCall, Assistant United States Attorney, for the Libellant. [56]

United States of America,
State of New York,
County of New York—ss.

I, G. Frank Dougherty, a Notary Public for the State of New York, qualified to act in and for the County of New York, certify that the following witness appeared and the following proceedings were had before me, pursuant to the notice attached hereto.

[Seal] (s) G. FRANK DOUGHERTY,
Notary Public, Nassau County.

Cert. filed N. Y. Co., No. 445. Reg. No. 9D307.

Commission Expires March 30th, 1939. [57]

DALE E. COLLINS,

a witness produced on behalf of the Libellee, after first being duly sworn, testified as follows:

Direct Examination

By Mr. Thompson:

Q. What is your full name?

A. Dale E. Collins.

Q. And where do you reside?

A. At 828½ South Normandy Street, Los Angeles, California.

Q. What is your occupation?

A. I am Master of the steamship "President Harrison", of the Dollar Steamship Line.

Q. What license do you hold?

A. A Master's license for any tonnage on any ocean.

Q. How long have you held such license?

A. Since 1934.

Q. Where is the steamship "President Harrison" now?

A. It is lying at the Erie pier, Jersey City.

Q. In the Port of New York?

A. Yes, sir.

Q. When did she arrive?

A. On January 11.

Q. When is she scheduled to depart?

A. January 15.

Q. How long have you been Master of the "President Harrison"?

A. Since October 22, 1937.

(Testimony of Dale E. Collins.)

Q. By whom were you employed just prior to that?

A. By the Dollar Steamship Line.

Q. In what capacity?

A. As chief officer of the steamship "President Coolidge". [58]

Q. When did you serve in that capacity on the "President Coolidge"?

A. From August 21 to October 13.

Q. You served in such capacity on August 26, 1937?

A. Yes, sir.

Q. Do you recall where the "President Coolidge" was on that day?

A. Yes; she was in Honolulu.

Q. Approximately, at what time did you arrive in the harbor?

A. Approximately, at 7 A. M.

Q. What time did you dock?

A. About 7:30 A. M.

Q. Do you know that a libel has been filed against the steamship "President Coolidge" by the United States of America charging that, during the forenoon of that day, in Honolulu Harbor, refuse matter, to-wit, garbage, consisting of celery, oranges, tea leaves, etc., was thrown from said vessel into Honolulu Harbor?

A. I do.

Q. When did you first learn of the alleged dumping?

A. About 10 A. M. that morning of the arrival in Honolulu.

(Testimony of Dale E. Collins.)

Q. How did you learn of it?

A. The man in charge of the Honolulu Engineers' boat came to my room and said that a bucket of garbage had been dumped into his boat from the stern of the vessel; and suggested that I investigate the matter immediately.

Q. Did he say anything about refuse being dumped into the Harbor?

A. No sir. [59]

Q. Do you recall his exact words?

A. No, I can't give you his exact words, but I will give them as nearly as possible. He said, "Mr. Mate, a bucket of garbage was dumped into our boat while I was passing underneath the stern. I think it was done deliberately. It is my intention to see that the ship is fined for this offense."

Q. At what time did the person say that this dumping had happened?

A. He said it happened a few minutes before he came to my room. He came directly to my room after his boat was docked at the end of the pier.

Q. What time was that?

A. Approximately 10 A. M.

Q. After that conversation what did you do?

A. I immediately——

Mr. McCall: I object to the question on the ground it is incompetent, immaterial and irrelevant.

A. I immediately went aft to the scene of the alleged dumping to investigate the matter, and I questioned all the men in the vicinity to see if they

(Testimony of Dale E. Collins.)

knew the person, or persons, who had supposedly dumped garbage into the boat.

Mr. McCall: I move to strike out the answer as the Captain was not present at the time and the place of the dumping.

Q. How many men did you question? [60]

Mr. McCall: I object as incompetent, irrelevant and immaterial.

A. I questioned all the Chinese in the vicinity who were working on the decks and all members of the crew who were lounging in that vicinity.

Q. What did you say to them and what did they say to you?

Mr. McCall: I object as incompetent, irrelevant and immaterial. The captain was not present at the time.

A. "Have any of you people thrown any garbage over the side?" and their answers were "No".

Q. Did you see any refuse matter thrown overboard in the morning of August 26, 1937?

A. No, sir.

Q. As Chief Officer, what were your duties especially in regard to dumping?

Mr. McCall: I object as incompetent, irrelevant and immaterial.

A. It is the Chief Officer's duty in regard to dumping garbage to see that the Captain's orders are carried out; in regard to that matter, there should be no dumping of refuse or fuel oil of any kind into harbors. It was my duty to instruct all

(Testimony of Dale E. Collins.)

the department heads to that effect. Notices were posted, in English and in [61] Chinese, so that all members of the crew would know the Captain's orders in that respect.

Mr. McCall: I move that the answer be struck out.

Q. Prior to reaching Honolulu Harbor on August 26, 1937, did the Captain of the ship issue any orders to you with respect to the dumping of refuse or garbage into the harbor while in Port?

Mr. McCall: I object as incompetent, irrelevant and immaterial.

A. Yes, sir.

Q. What were the orders?

Mr. McCall: I object as incompetent, irrelevant and immaterial, and no bearing on the issues.

A. The Captain's orders to me were to see that all department heads were notified, and he ordered notices posted regarding the dumping of garbage in port; no garbage was allowed to be dumped at any time in port.

Mr. McCall: I move that the answer be struck out.

Q. Pursuant to the orders, what did you do?

A. I immediately notified all the department heads——

Mr. McCall: I object to the question as incom-
[62] petent, irrelevant and immaterial.

(Testimony of Dale E. Collins.)

A. —and the No. 1 boy to see that the notices were posted.

Mr. McCall: I move that the answer be struck out as incompetent, irrelevant and immaterial.

Q. What facilities did the "President Coolidge" have at that time for the disposal of garbage while in port?

A. About ten fifty-gallon drums stationed in the fantail, aft, for disposal of garbage in port.

Q. What was done with the drums?

Mr. McCall: I object to the question as incompetent, irrelevant and immaterial, no bearing on the question as to whether that garbage was thrown overboard; it is part of the custom, and in fact cannot be denied.

A. Those drums are dumped after we get to sea; the garbage dumped from the drums after we get to sea.

Q. Did you authorize the dumping of any garbage or refuse over the side while in Honolulu Harbor on or about the 26th day of August, 1937?

Mr. McCall: I object to the question as incompetent, irrelevant and immaterial.

A. No, sir. [63]

Q. You spoke of the company's notices with respect to dumping while in port and you stated that notices were posted on the ship. Were those notices posted on August 26, 1937?

Mr. McCall: I object to the question as incompetent, irrelevant and immaterial.

A. May I ask you a question?

(Testimony of Dale E. Collins.)

Q. Yes.

A. You say the company's notices? You mean the company's notices? Notices posted by the officers?

Q. Yes. I will reframe the question.

Mr. McCall: I object.

Q. You spoke of notices which were posted with respect to the dumping of garbage and other refuse while in port and you said that notices were posted on the ship. Were those notices posted on August 26, 1937?

A. No, sir. They were posted August 25, a day prior to that.

Q. Did they remain in place on August 26?

A. Yes, sir.

Mr. Thompson: That is all. [64]

Cross Examination

By Mr. McCall:

Q. Whereabouts was this garbage said to have been dumped or thrown from the ship—from what of the ship?

A. The fan-tail, aft of the ship.

Q. At what time did you first see the inspector who said it had been thrown?

A. Approximately, 10 A. M.

Q. Where were you during the half an hour preceding 10 A. M.?

A. I was in the vicinity of the bridge.

Q. That is in the forward part of the boat?

A. Yes, sir.

(Testimony of Dale E. Collins.)

Q. You were not at the place where the garbage was said to have been dumped until you went there after hearing that there had been a dumping of garbage?

A. No, sir.

Q. You know nothing of the matter of your own knowledge?

A. No, sir.

Mr. McCall: That is all.

Redirect Examination

By Mr. Thompson:

Q. At the time of the alleged occurrence did you see any refuse floating in the water?

A. No, sir.

Q. What facilities did the ship have for the disposal of garbage at sea?

Mr. McCall: I object to the question as being [65] incompetent, irrelevant and immaterial.

A. We have slop-chutes from the galley, and also slop-chutes from the steerage galley.

Q. Are the slop-chutes used while you are in port?

A. No, sir.

Mr. McCall: I object as being incompetent, irrelevant and immaterial.

Q. What is done to them while you are in port?

Mr. McCall: I object as incompetent, irrelevant and immaterial.

A. The slop-chute had a lid which can be locked, in the galley, and I have a padlock which I attach to it while in port; it is locked.

(Testimony of Dale E. Collins.)

Q. Were the slop-chutes on the "President Coolidge" locked on the 26th of August, 1937?

A. Yes, sir.

Q. Did you lock them personally?

A. No, sir.

Q. Did you see that they were locked?

A. I saw to it that they were locked. I checked up immediately after this report to see if they were locked.

Recross Examination

By Mr. McCall:

Q. Can all the slop-chutes be locked?

A. Yes, sir.

Q. All inside the ship can be locked?

A. Yes, sir. [66]

Q. There are slop-chutes outside the ship?

A. There is one.

Q. Can that be locked?

A. No, sir.

Q. Where is that?

A. On the aft rail, the fan-tail.

Mr. McCall: That is all.

By Mr. Thompson:

Q. Where are the garbage disposal cans, or drums, in relation to the open slop chute?

A. Right alongside slop-chute, on the same side, right on deck.

Mr. Thompson: That is all.

Examination Concluded

(s) DALE E. COLLINS.

Subscribed and sworn to before me this 14th day of January, 1938.

[Seal]

G. FRANK DOUGHERTY.

Notary Public, Nassau County.

Cert. filed N. Y. Co. No. 445, Reg. No. 9D307.

Commission expires March 30th, 1939. [67]

[Title of District Court and Cause.]

United States of America,

State of New York,

County of New York.—ss.

I hereby certify that on the 13th day of January, 1938, before me, G. Frank Dougherty, a Notary Public for the State of New York, qualified to act in and for the County of New York, personally appeared, pursuant to the notice hereto annexed, between the hours of 10 o'clock A. M. and 1 o'clock P. M., the witness named in the said notice, such witness being Dale E. Collins; and Thompson, Wood & Russell, by Sawyer Thompson, Esq., appeared as counsel for the Libellee, and Lamar Hardy, Esq., United States Attorney for the Southern District of New York, by Thomas [68] McCall, Esq., appeared for the Libellant; and the said witness being by me first duly cautioned and sworn to testify the whole truth, and being carefully examined, deposed and said, as appears by the deposition hereto annexed.

And I further certify that the said deposition was reduced to writing under my personal supervision, and was, after it had been reduced to writ-

ing, subscribed by the witness, and the same has been retained by me for the purpose of sealing up and directing the same to the Clerk of the Court as required by law.

And I further certify that the reason why the said deposition was taken was that the said witness resides at more than one hundred miles from the place where this cause is to be tried.

And I further certify that I am not of counsel or attorney to either of these parties, nor am I interested in the event of the cause.

In testimony where, I have hereunto set my hand and official seal at the City of New York, in the County of New [69] York and State of New York, this the 14th day of January, A. D., 1938.

(s) G. FRANK DOUGHERTY (Seal)

G. FRANK DOUGHERTY

Notary Public, Nassau County

Cert. Filed N. Y. Co. No. 445, Reg. No. 9D307

Commission expires March 30th, 1939. [70]

NOTICE OF TAKING DEPOSITION

With admission of service
(Attached to Original) [71]

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[Title of District Court and Cause.]

CITATION ON APPEAL.

The United States of America.—ss.

The President of the United States of America,

To: The United States of America and to Ingram
M. Stainback, United States Attorney for the
Territory of Hawaii: Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Judicial Circuit of the United States of America, in the City and County of San Francisco, State of California, ~~Honolulu, Territory of Hawaii,~~ [W.F.T.] within thirty (30) days from the date of this writ, pursuant to an order allowing an appeal, filed in the clerk's office of the United States District Court for the Territory of Hawaii, wherein you are the libellant and The Steamship "President Coolidge" [74] is the libellee, to show cause, if any there be, why the decree in said appeal mentioned should not be corrected and speedy justice should not be done to the parties on that behalf.

Witness the Honorable Charles Evans Hughes, Chief Justice of the Supreme Court of the United States of America, this 1st day of April, 1938.

EDWARD M. WATSON,

Judge,

United States District Court,
Territory of Hawaii.

WM. F. THOMPSON, JR.,

Clerk,

United States District Court,
Territory of Hawaii.

Received a copy of the within citation.
INGRAM M. STAINBACK

United States Attorney
District of Hawaii.

By (s) J. FRANK McLAUGHLIN
Asst. United States Attorney
District of Hawaii. [75]

[Title of District Court and Cause.]

TRANSCRIPT

of proceedings and testimony before the Honorable Edward M. Watson, Judge presiding, in the above entitled Court on Thursday, March 17, 1938, commencing at 10:35 a. m., the Libellant appearing by J. Frank McLaughlin, Assistant United States Attorney; the Libellee appearing by Messrs. J. P. Russell and A. G. Bowman of the law firm of Thompson, Wood & Russell.

Mr. McLaughlin: Ready for the Government.

Mr. Bowman: Ready for the plaintiff. In this case our appearance has been entered for the Dollar Steamship Lines, Inc., Ltd., the claimant; Mr. Russell and I, representing the firm of Thompson, Wood & Russell, are handling this. [78]

The Court: Your names will be entered, Mr. Bowman and Mr. Russell appearing on behalf of the firm of Thompson, Wood & Russell.

Mr. McLaughlin: May it please the Court, this case in Admiralty was instituted by the United States on August 27th, 1937, pursuant to the pro-

visions of Title 33 of the United States Code, Sections 407, 411, and 412. The libel against the Steamship "President Coolidge", her engines, boilers, machinery, tackle, apparel and furniture, reads as follows: "To the Honorable, the Presiding Judge of the above entitled Court:—"

The Court: I have read the pleadings, Mr. McLaughlin, and I don't believe it will be necessary to take up the time reading the complaint.

Mr. Russell: Your Honor has also read the answer?

The Court: Yes. The answer admits that the ship was lying in the harbor on that day, and denies practically all of the other allegations of the complaint.

Mr. McLaughlin: As the allegations of the libel have been denied by the claimant of the vessel, the Government will introduce evidence to substantiate the same; and we will show that on this particular day in question, August 26th, 1937, from the vessel the "President Coolidge" there was thrown into Honolulu harbor rubbish consisting in part of garbage, consisting of celery, orange shells, tea leaves, and so forth; and the conclusion which we desire to have the Court arrive at from the evidence which we will introduce is that on this particular day by virtue of these acts the [79] "President Coolidge" violated the law and is subject to a penalty under the law. I am at this time ready to proceed with the Government's case; but it has been requested, in view of the fact that the master of the "Presi-

dent Coolidge" who is here in court has an appointment shortly,—

The Court: That he may be called out of turn?

Mr. McLaughlin: That he may be called out of turn, and to that I have no objection at all.

The Court: That's agreeable to the Court. The master doesn't happen to be the same gentleman who gave his deposition already in this case, does he?

Mr. Bowman: No. We have the deposition of Collins, who was formerly chief officer.

Mr. Russell: Captain Ahlin is master of the "President Coolidge" now, and I'd like to call him as my first witness.

The Court: All right; he may be called out of turn.

CARL ALBERT AHLIN

being first duly sworn as a witness for the Libellee, testified as follows:

Direct Examination

By A. G. Bowman, Esq.:

Q. What is your name, please, your full name?

A. Carl Albert Ahlin.

Q. And where is your residence?

A. 6981 Vincente Avenue, Berkeley, California.

Q. What is your present occupation?

A. Ship master.

Q. Of what ship? [80]

The Court: You'll be permitted to ask leading questions to bring out this information; it will save

(Testimony of Carl Albert Ahlin.)

considerable time, I think. This information that, I take it, is not in dispute at all; Captain Ahlin is master of the ship "President Coolidge", that arrived in port this morning, I believe.

A. Yes, Your Honor.

The Court: How long have you been master of that ship?

A. Since she was built in 1931, sir.

The Court: Continuously?

A. Yes sir.

The Court: Proceed, Mr. Bowman.

Mr. Bowman: And your employer is the Dollar Steamship Lines, Inc., Ltd.?

A. Yes sir.

Q. And you receive instructions from the Dollar Steamship Lines, Inc., Ltd., relative to the operation of your ship?

A. Yes sir.

Q. And can you tell us what are the departments of the ship; there are various departments, are there not, on board ship; can you tell us briefly what they are?

A. Well, there are only two departments, the engine room and the deck; and the steward comes in with the hotel end of it.

Q. Who is in charge of these departments?

A. The chief engineer of the engine room; the chief officer of the deck; the chief steward of the hotel part of it.

The Court: All of these under your general supervision?

(Testimony of Carl Albert Ahlin.)

A. All under my supervision.

The Court: As master of the ship you have supervision of the entire crew in all of the departments? [81]

A. When away from home, yes.

Mr. Bowman: Can you tell us approximately how many are employed on board the ship?

A. Right now, 359.

Q. And on August 26th, 1937?

A. Somewhat less; I think, about 330.

Q. Who is the chief officer on board now?

A. Mr. Heine.

Q. And who was chief officer on August 26th, 1937?

A. Mr. Collins.

Q. Dale E. Collins?

A. Yes, that's right.

Q. Is he on board now?

A. No sir; he's now master of the "President Harrison".

Q. Do you know where he resides?

A. No, I do not, sir.

Q. What are the duties of the chief officer?

A. Oh, supervising the ship in general, outside of the engine room; he doesn't go down there and do anything, but outside of that he looks over everything in general.

The Court: Sort of an executive officer under the captain's immediate orders?

A. Yes, Your Honor.

(Testimony of Carl Albert Ahlin.)

The Court: And he sees that the captain's orders are carried out?

A. Yes, Your Honor.

Mr. Bowman: Do you recall where the "President Coolidge" was on August 26th, 1937?

A. It sort of slipped my memory, but I understand we were in Honolulu on that day. The ship's records will show where we were. [82]

The Court: Is it conceded for the purpose of this case that the ship was in Honolulu harbor on that day?

Mr. McLaughlin: Well, the peculiar part of it, Your Honor, is that the concession shouldn't come from the Government—

The Court: It's part of your case, I understand.

Mr. McLaughlin: I am in position to prove it.

The Court: Well, it would save time—

Mr. McLaughlin: Well, the concession—

The Court: It is conceded, then, by each side that the ship was in Honolulu harbor?

Mr. Bowman: I don't believe there will be any material issue on that.

The Court: Well, is it conceded—it's agreed?

Mr. Bowman: Yes.

Mr. McLaughlin: I agree to that.

Mr. Bowman: And do you know that a libel has been filed against the "President Coolidge" alleging that refuse matter was thrown into the harbor at Honolulu on August 26, 1937?

A. Yes, I heard of it, but I don't remember when; I think, some time after leaving Honolulu;

(Testimony of Carl Albert Ahlin.)

I was not aboard the ship when it happened, and no one said anything to me until we got away.

Q. Can you tell us whether or not there are any rules and regulations with respect to the dumping of refuse?

A. There is orders issued by the Company to me and the various heads of the departments to warn and see as far as my ability goes that nothing is thrown overboard within the harbor limits of any port that we go to. For extra [83] precautions they have locks and hasps whereby they lock up the slop-chute and that sort of stuff, as well as placing containers on the aft end of "B" deck whereby they are supposed to deposit the refuse while in port.

Q. Can you tell us whether or not there are instructions relative to the dumping of refuse?

The Court: By whom?

Mr. Bowman: Issued by you?

A. By me to the heads of the departments, and they in turn to their respective sub-heads of departments or whatever else you might call them.

Q. And you say they come to you from——

A. The Dollar Steamship Company.

Q. And in turn they are relayed to the heads of the departments on your ship?

A. Yes.

Q. And how long have these rules and regulations been in force?

A. More or less since the ship went into commission; not only on this ship but on all of the ships in the fleet there are such circulars out.

(Testimony of Carl Albert Ahlin.)

Q. And can you give us any information concerning orders issued with reference to dumping of refuse?

A. Not other than that sometimes when we have gatherings, when I get a circular of that sort I immediately get in touch with whom it concerns, and find that everybody has a copy of it and has already taken the thing in hand before I get to it.

Q. And do you have any knowledge of notices being posted about the ship?

A. Yes sir. [84]

Q. What are the nature of those notices?

A. Well, they are notices in two languages; at the time we carried Orientals, and the notices were both in Chinese and English.

The Court: You were referring to August, 1937, now, Captain, when you say "at the time"?

A. Well, in August when we were here we carried Orientals, when this thing took place. Those same signs are still hanging up there, but the Chinese language might be scratched off because there ain't any, I understand, there now; but they are in both languages.

Mr. Bowman: Can you tell us what those notices contained, to the best of your knowledge?

A. Instructions not to under any circumstances throw anything overboard while anywhere in the harbor limits; that's the rough outline of it; I haven't the wording of it exactly with me.

Q. Were the notices posted prior to August 26, 1937?

(Testimony of Carl Albert Ahlin.)

A. Yes sir.

Q. Do you know whether or not any refuse was thrown overboard on August 26, 1937?

A. No sir.

Q. Did you order any refuse to be thrown overboard?

A. No sir.

Q. Do you know whether or not anybody on board ship ordered refuse to be thrown overboard?

A. No sir.

The Court: You do know, or you do not know, Captain?

A. I do not know, sir. [85]

The Court: You weren't on the ship that day, you said?

A. No; I was ashore most of the time, sir.

The Court: What time did the ship arrive in port that morning, if you know?

A. Somewheres around 10 o'clock, I think, sir.

The Court: And what time did she get out, if you know?

A. I think her sailing hour at that time was 10 p. m.; whether we sailed on time or not I don't remember just now.

The Court: During most of the time the ship was in port you were ashore?

A. Yes sir.

The Court: Who was in charge during your absence?

A. The chief officer, sir.

The Court: Mr. Collins, at that time?

(Testimony of Carl Albert Ahlin.)

A. Yes sir.

Mr. Bowman: Captain Ahlin, you testified that there were garbage chutes which were locked. Can you explain that matter to us?

A. Slop-chutes, you mean, from the kitchen?

Q. Yes; and you mentioned locks; will you describe——

A. Nothing to describe other than a lock and hasp whereby they can't lift the lid and drop anything down into the harbor.

Q. When are they locked?

A. The steward sees to that before we enter harbor limits of any ports we go into.

Q. And those are instructions coming from you?

A. And the Dollar Company.

Q. And when are they unlocked? [86]

A. When you're clear of the pilot grounds or outside of harbor limits.

Q. Captain Ahlin, can you tell us the approximate size of the "President Coolidge"?

A. What do you have in mind?

The Court: In tonnage, or in length, or what?

Mr. Bowman: The length and height.

A. The height of the ship?

Q. From the water.

A. From the bridge she is about 60 odd feet over water.

Q. "B" deck aft is——?

A. Roughly speaking—I haven't measured it—it would be probably 35 or 40 feet, or somewheres thereabouts, maybe a little less or more.

(Testimony of Carl Albert Ahlin.)

Mr. Bowman: That's all.

Cross-Examination

By J. F. McLaughlin, Esq.:

Q. Captain, with reference to August 26, 1937, on that particular date in the steward's department of your vessel were there any Chinese employees working in the steward's department?

A. Yes sir, I think so.

Q. With reference to these notices which you've said were posted to the effect that no rubbish should be thrown overboard while in port under any circumstances, I understood you to say they were posted in both the English language and the Oriental language?

A. Yes sir.

Q. By the "Oriental language" do you mean to include that they were noticed in the Chinese language? [87]

A. Characters, yes sir.

Q. And what particular dialect?

A. Cantonese, I presume, because they were all Cantonese.

Q. Do you know whether or not the Chinese employed on the "President Coolidge" on that date were all Cantonese or spoke Cantonese dialect?

A. I think they were, practically all, because they were all from Hongkong generally, from around Canton, generally referred to as Cantonese.

Q. But actually you do not know whether they were conversant with the Cantonese dialect?

(Testimony of Carl Albert Ahlin.)

A. I think they were.

Q. You think they were?

A. I think they were; no question about it.

The Court: Could they all read write, to your knowledge?

A. No, I wouldn't know; but if one couldn't he tells the other fellow.

The Court: That's jumping at a conclusion. Just tell what you know of your own knowledge.

A. I beg your pardon.

Mr. McLaughlin: Referring to the locks on these slop-chutes which you've referred to, are the locks on those chutes padlocks or something akin to padlocks?

A. Commonly what we term "jail locks" or padlocks; there's different shapes of padlocks.

Q. What I have in mind asking you is whether or not they were locked in such a way that no regular employee other than an officer could unlock them?

A. Not unless he had a key to do it with.

Q. It requires some sort of a key, is that correct?

[88]

A. Yes sir, it does.

Q. It's more than just what they call a "dog-ear"?

A. No, no, it's a regular padlock.

Q. A regular padlock?

A. A "jail lock" is what they call it.

Q. In reference to these rules and regulations that have been promulgated by your steamship com-

(Testimony of Carl Albert Ahlin.)

pany and further promulgated by you as captain of the vessel, do you know whether or not there ever have been occasions when your orders or regulations have not been observed?

A. Not along those lines, no sir.

Q. Have you ever had any regulation of the Company or order issued from you as captain that has ever been violated?

A. Not to my knowledge.

Q. Every order that you give is always adhered to?

A. As near as possible.

Q. But is it not true, Captain, that despite rules and regulations and orders from you, that there might nevertheless be infractions thereof?

A. Not to my knowledge, sir; there shouldn't be; I have never——

The Court: You have a splendid ship if you've never had a rule broken; I have never heard of instances on ship or ashore where a rule was not sometimes violated.

Mr. McLaughlin: You understand that this question does not mean that they were violated with your consent, but contrary to your orders and directions have any of those rules and regulations to your knowledge ever been broken?

A. Not in connection with this particular case we're talking about; there may have been others, but I have no knowledge [89] of any; the seamen sometimes disobey.

The Court: Seamen sometimes violate rules?

(Testimony of Carl Albert Ahlin.)

A. I think so.

The Court: But you say, so far as the dumping of rubbish is concerned, you have never known a violation?

A. No sir.

The Court: That's what you mean to convey?

A. That's what I have in mind, yes, Your Honor.

Mr. McLaughlin: If there was a violation of your rules and regulations with respect to no dumping of rubbish while in port, would you necessarily know whether or not rubbish was dumped in violation of those orders?

A. No sir, I wouldn't. As I stated before, I wasn't on the ship at the time.

Q. But with reference to any time, Captain, in any port?

A. Not to my knowledge.

Mr. Russell: If the Court please, may we object on the ground that testimony as to other ports and other occasions is irrelevant and immaterial. In this particular instance they have charged one particular violation, and evidence which goes outside of that violation charged does not bear on the issues in this case.

The Court: The Court has allowed a pretty liberal examination of this witness in which he has been asked to give various conclusions; I think I'll allow the cross-examination.

Mr. McLaughlin: Re-phrasing that question, Captain. As captain of the boat would you necessarily know that a regulation or order had been violated?

(Testimony of Carl Albert Ahlin.)

A. No, not at the time I wouldn't; it may be later on I'd be informed of it. [90]

Q. Would you, for example, in connection with this alleged August 26, 1937 violation, which if true was also a violation of your orders, would you in the nature of things as captain of the ship have known that rubbish on that date was thrown overboard unless some libel of this sort had been instituted?

A. No sir.

Mr. McLaughlin: That is all.

Redirect Examination.

By A. G. Bowman, Esq.:

Q. One more question, Captain. You testified that on August 26th, 1937, there were Chinese employed on the ship. Was there any person in charge of the Chinese?

A. The steward was in charge of all of them.

Q. And was there any Chinese at the head of the Chinese employees?

A. There was what they term a "number one" Chinaman who supposedly is their boss; but the steward knows more about that than I do.

Q. You say there are no Chinese on the ship now. Do you know where those Chinese are who were formerly employed?

A. No.

Q. Do you know where the "number one China boy" is?

A. Some place in Hongkong or Canton.

Mr. Bowman: That's all.

Mr. McLaughlin: That's all.

The Court: You may be excused, Captain. Is that the only witness you had to call at this time, Mr. Bowman?

Mr. Bowman: Yes. We have other witnesses, but we requested that the Captain be called out of turn.

[91]

The Court: All right; then the United States will put on its evidence in the regular order.

NORMAN R. ARTHUR

being first duly sworn as a witness for the Libellant, testified as follows:

Direct Examination

By J. F. McLaughlin, Esq.:

Q. What is your name, please?

A. Norman R. Arthur.

Q. What is your occupation?

A. Hired as boatman for the patrolling of the Honolulu harbor.

Q. By whom are you employed?

A. By the District Engineer.

The Court: United States Engineer?

A. Yes sir.

Mr. McLaughlin: And what are your duties as harbor patrol?

A. My duties as harbor patrol is to catch anyone in the throwing of any rubbish of any nature into the harbor, pumping of any bilges or of any oil lines leaking into the harbor, which is to be reported to my superior immediately.

(Testimony of Norman R. Arthur.)

Q. Your superior is whom?

A. At the present time, Major Bermel and Captain Ross.

Q. On August 26, 1937, who was your superior?

A. Major Crawford.

Q. And who is Major Crawford?

A. Major Crawford was the District Engineer.

Q. By "District Engineer" do you mean United States District Engineer?

A. Yes sir. [92]

Q. You've said that it is your duty to patrol the harbor; what harbor do you refer to?

A. Honolulu harbor.

Q. And for the purpose of patrolling the harbor in connection with the duties which you have just outlined, what facilities have you for this patrolling duty?

A. At the time of this occasion I had two launches, one a sampan and the other a motor sailer of the Navy build.

The Court: A motorboat, you say, and a sampan?

A. Yes sir.

Mr. McLaughlin: Now, directing your attention to August 26, 1937, do you know whether or not on that day the steamship "President Coolidge" was in Honolulu harbor?

A. Yes sir.

The Court: Well, was she?

A. Yes sir, she was.

Mr. McLaughlin: Was that vessel on that day at rest in Honolulu harbor?

(Testimony of Norman R. Arthur.)

A. Yes sir; she was moored alongside of Pier 8.

Q. On August 26, 1937, did you patrol Honolulu harbor?

A. Yes sir, I did.

Q. Were you engaged in patrolling the harbor in the forenoon of that day?

A. Yes sir.

Q. And in that forenoon did you patrol in the vicinity of Pier 8?

A. Yes sir, I did.

Q. And what particular boat were you using for the discharge of your patrol duties on that day?

A. I use no particular boat; I take them out in the—— [93]

The Court: Well, that morning what boat were you using?

A. My sampan.

Mr. McLaughlin: On August 26, 1937, the forenoon of that day, you've said you patrolled within the vicinity of Pier 8 where the "President Coolidge" was tied up; as you patrolled within the vicinity of the "President Coolidge" on that day do you know whether or not from that vessel any rubbish was thrown?

Mr. Bowman: We object to the question as being leading, if the Court please.

The Court: It is leading, and the Court will sustain the objection. This is a crucial point in the case. "Do you recall any particular incident that occurred at that time", if that meets with your question.

(Testimony of Norman R. Arthur.)

Mr. McLaughlin: Very well. Mr. Arthur, in connection with your patrol of the harbor on this particular date, in the forenoon thereof, do you recall any particular incident with relation to the steamship "President Coolidge" which impressed itself upon your mind?

A. I just don't quite understand you, sir.

Q. Well, let's put it this way. On the day in question, August 26, 1937, in the forenoon part of that day, as you were patrolling within the vicinity of Pier 8 where the "President Coolidge" was tied up, did you observe any infraction of—re-phrasing that part of the question; did you observe anything which you felt was within the scope of your duties?

A. At all times that's impressed on my mind by my superiors to watch and suspect all boats and watch them at all times.

The Court: Well, did anything happen there that day when [94] you were patrolling by the "President Coolidge"?

A. Yes sir.

Mr. McLaughlin: What was that?

A. As I rounded the stern of the "President Coolidge" there was a bucket of slop that was dumped squarely on my head, and which it is my duty to stop all such stuff as that; I didn't think it was a very good way it was stopped.

The Court: It was stopped by your head at that time?

A. Yes sir.

(Testimony of Norman R. Arthur.)

Mr. McLaughlin: Mr. Arthur, will you go to the blackboard and draw to the best of your knowledge a representation of Pier 8 in Honolulu harbor and a representation of the "President Coolidge" as it was tied up at that pier, and note on the diagram which you draw the direction in which you were coming when you observed this incident.

(Witness proceeds to blackboard)

The Court: Do you think that will be of any assistance?

Mr. McLaughlin: Yes, Your Honor.

The Court: The Court has a fair knowledge of waterfront conditions there, and Mr. Arthur has explained—that's more a matter of cross-examination, is it not, than direct?

Mr. McLaughlin: I do not believe so, Your Honor. I have a purpose in having the diagram drawn.

The Court: All right, go ahead; I was trying to save time, that's all.

A. (sketching): This is more or less as the pier; coming down, this is Pier 8 here; the stern of the "Coolidge" was overlapping the pier. I was coming on my patrol, while coming down the wharf, and I cut to go under the counter of the "Coolidge", and as I got over amidships or about half [95] passed that, when the rubbish came down and lit on to me; and when this rubbish lit on to me I had automatically—as the knowledge of any man operating a boat—I had thrown the boat out of gear, and you down your wheel to 'midships, and until I had

(Testimony of Norman R. Arthur.)

cleared my eyes up I had drifted between the two piers, then I proceeded over here to the other pier and laid alongside of the pier, where one the fellows from the Coast Guard was sitting on the pier, and I asked him if he seen what that fellow done, and he said, "Yes,——"

Mr. Bowman: I object——

The Court: Never mind the conversation. You were in the sampan at that time, as you've testified?

A. Yes sir.

Mr. McLaughlin: Now, with reference to the point where you were when this material hit you, just exactly how did it hit you and of what did the material consist?

A. It hit me right squarely on the head, and consisted of—there was cabbage, orange peelings, and some celery, and tea leaves, and water.

Q. Was there any particular odor to this material?

A. Well, it smelled just like swill, to my knowledge.

Q. Did any of this material land in the water?

A. Yes sir, it all did, practically all of it except the dry rubbish aboard the boat, which stayed.

Q. At the time you were hit with this material you say you worked your steering apparatus in some manner, is that correct?

A. I worked my steering apparatus to 'midships, yes sir.

(Testimony of Norman R. Arthur.)

Q. And you say your sampan drifted between the two piers?

A. Yes sir. [96]

Q. Did I understand you to say that after you were hit with this material that there were some few minutes before your sight cleared up, is that correct?

A. It wasn't a few minutes, just probably half a minute or something like that, just to wipe it out of my eyes, that's all.

Q. And after your vision became clear did you look toward the "President Coolidge"?

A. Yes sir, I did.

Q. And what did you see?

A. I seen one follow up there walk away with a can; he was carrying a can——

The Court: Seen one what?

A. One Chinese fellow, sir.

The Court: Al right; go ahead.

Mr. McLaughlin: And what was he doing?

A. All I seen him do, he was just walking; he had come from the stern of the boat and was walking over towards the cabins or whatever they call them.

Q. At the time you first saw him, will you note on that diagram exactly where he was to the best of your recollection?

A. To the best of my recollection he was just about in here, he was probably five feet off the railing when I noted him.

(Testimony of Norman R. Arthur.)

Q. Did you say he was carrying a can?

A. Yes sir.

Q. Have you knowledge as to the size of that can?

A. Well, I would imagine it would look——

The Court: We don't want your imagination.

A. About a ten gallon can, sir. [97]

The Court: You observed that, did you?

A. Yes sir.

Mr. McLaughlin: You say this individual that you saw at that time employed on the "President Coolidge" was a Chinese individual?

A. Yes sir.

Q. How was he attired, if you know?

A. As far as I could see, the upper half of him was a black shirt, and it's a little like a blue work-shirt the pants he had on.

Q. Was there anyone else on the stern of this vessel within the vicinity of this man that you saw at that time?

A. There was one other fellow sitting right over here towards this railing, by the bulkhead.

Q. Will you mark that on the diagram?

A. By this bulkhead, right here, he was sitting in here.

Q. What sort of an individual was he?

A. He was a Chinese too.

Q. How was he attired, if you know?

A. He was sitting down, with black satin pants on and a white shirt, heavy woolen undershirt.

(Testimony of Norman R. Arthur.)

Q. And those were the only two people you saw immediately after you were hit with this material?

A. Yes sir.

Q. And those people were on the stern portion of the "President Coolidge"?

A. Yes sir.

Q. You've said that you came over to the other side of the pier; is this also Pier 8?

A. No sir, that's Pier 7. [98]

Q. Was there a vessel lying alongside Pier 7?

A. The Coast Guard boats are laying alongside, sir.

Q. Do you know the number of that Coast Guard boat?

A. 838 I think is what it is.

Q. Did you see anyone within the vicinity of that Pier?

A. Yes sir, I seen this Coast Guardsman which I knew.

Q. Do you know him by name?

A. No sir, I did not.

Q. Do you know him by sight?

A. Just by sight, yes.

Q. Did you have a conversation with him?

A. Yes; we sat there and talked.

The Court: Don't tell what you said; did you talk with him?

A. Yes sir.

Mr. McLaughlin: And what did you ask him?

(Testimony of Norman R. Arthur.)

A. I asked him if he had seen what happened, and he said "Yes".

Q. Wait a minute; don't tell what he said to you; but what did you say to him?

A. I asked him if he had seen what happened, and then I asked him if he would be a witness for me, so I took his name and number of his boat, and that's all.

Q. Do you know what his name is now?

A. No sir, I couldn't call it right off.

Q. Would you know him if you saw him?

A. I would.

Mr. McLaughlin: (addressing someone in court-room): Will you please stand.

Q. Is that the man that you had this conversation with?

A. Yes sir.

Q. What did you do after having this conversation with this man from the Coast Guard boat? [99]

A. I proceeded back to Pier 8 and went aboard and seen the chief mate.

Q. Well now, prior to the time you went aboard the "President Coolidge"—

The Court: How long a time elapsed between the time this stuff hit you on the head and your talk with the first officer; about how long?

A. About four or five minutes, sir.

Mr. McLaughlin: In terms of your own garments worn by you at the time you were decorated

(Testimony of Norman R. Arthur.)

with this material, did you have the same garments on when you went aboard the "President Coolidge" to see the officers thereof?

A. No, I did not.

Q. Why not?

A. Because they weren't fit to walk around the street with.

Q. What did you do?

A. I took off my clothes and put on some working clothes which I carry on my boat at all times, my painting clothes.

Q. When you went aboard the "President Coolidge" whom did you see?

A. I seen the chief mate, sir.

Q. Do you know what his name was?

A. No sir, I do not.

Q. And what did you tell him?

A. I told him just what had happened, and we proceeded back aft to find out who had done it, and he questioned everyone that he seen there, and they have the general knowledge in which all of them say they don't know, so we proceeded and got the "number one" man up, and he got the same answer, they don't know. [100]

Q. When you and the chief mate of the "President Coolidge" were making this investigation as to who may have thrown this material overboard, did you see this Chinese man in the black shirt?

A. Yes sir, I did.

Q. Where was he at that time?

(Testimony of Norman R. Arthur.)

A. When we come aboard he was sitting back in the stern there.

Q. Will you designate on that diagram where he was when you and the chief mate were making this investigation?

The Court: Mark "X" there so it will indicate.

A. He was approximately sitting right in there (indicating).

Mr. McLaughlin: Was he doing anything?

A. No sir, he was not.

The Court: Mr. Arthur, are you familiar with the deck arrangements of the "Coolidge" there in the stern of the ship; do you know what that arrangement is back there, with respect to the location of the galley, for instance?

A. No sir, I don't; I have never been through one of those ships thoroughly.

The Court: All right.

Mr. McLaughlin: Mr. Arthur, do you know whether or not the material which emanated from the "President Coolidge" on this occasion and which in part hit you came from any of the ship's slop-chutes?

A. No sir, it did not.

Q. Do you know how it was tossed overboard?

A. It was thrown over the rail.

Q. When you were investigating this matter together with the ship's chief mate, did you observe any receptacles [101] for rubbish or garbage in the stern portion of this boat on this particular deck where these men were sitting?

(Testimony of Norman R. Arthur.)

A. Yes sir, and they were all full.

The Court: What was that last?

(Reporter reads last answer)

A. Yes sir, the ones that were on the stern of the boat.

The Court: All right. I just wanted to get the answer; I didn't hear it.

(Recess—11:18 to 11:22 a. m.)

The Court: Proceed with the cross-examination.

Mr. Bowman: Mr. Russell is going to conduct the cross-examination, if there's no objection.

Mr. McLaughlin: No objection on my part.

Mr. Russell: If the Court please, I understand Mr. McLaughlin wants to bring out one further question.

Mr. McLaughlin: I just want to ask one more question, if I have the Court's permission as well.

The Court: It is granted.

Mr. McLaughlin: At the time you were hit with this material do you know approximately what hour of the day it was?

A. It was somewheres between 9:20 and 10:00, somewheres around 10 or 11, somewheres in there; I couldn't tell exactly the time.

Mr. McLaughlin: That's all.

Cross Examination

By J. P. Russell, Esq.:

Q. Mr. Arthur, how long have you been employed on this particular job that you testified you occupied at that date?

(Testimony of Norman R. Arthur.)

A. I have been employed in Honolulu harbor as patrol for [102] four years, and I have been with the Engineers for six years upon another boat on which we patrolled all the Islands where they were at work surveying harbors, with the same orders.

Q. And did you say it was your duty to check up around the harbor for refuse and that sort of thing that would be thrown over?

A. Yes sir.

Q. And was that your duty during this entire period you were so employed?

A. Yes sir.

Q. Aren't you the person that went and asked Mr. Ross of the Dollar Steamship Lines to get you a new suit because you had been hit by this garbage?

A. I didn't tell him for nothing.

The Court: "I didn't tell him for nothing"; what do you mean?

A. I didn't ask him for anything.

Q. Didn't you see Mr. Ross of the Dollar Steamship Lines?

A. I seen Mr. Ross and explained to him just what had happened.

Q. You mean to tell me you didn't say anything about reimbursing you or getting your suit cleaned or getting you new clothes after this happened?

A. I mentioned about my clothes, yes sir.

Q. In fact, you were rather annoyed by this incident, weren't you, after all this garbage fell on your head?

A. Yes sir, I was.

(Testimony of Norman R. Arthur.)

Q. You were pretty mad right afterwards, weren't you?

A. I was, yes.

Q. You went over, I think you testified, and talked to this Coast Guard employee right away. How did you happen to [103] want him to be a witness?

A. For the simple reason I've got my orders that way.

Q. It wasn't just because you were mad and wanted to be sure somebody could prove to the Dollar Company that you needed a new suit?

A. No, I have no new suit, I do not wear a new suit when I am patrolling.

Q. What were you wearing?

A. I wore a blue work-shirt and blue dungaree pants.

Q. When you changed your clothes as you testified?

A. I put on my working clothes that I use for painting.

Q. How do they differ from what you used before?

A. They are absolutely the same, but the clothes you use for painting you cannot use for patrolling.

The Court: You mean they were daubed up with paint?

A. Yes sir.

Mr. Russell: In testifying I think you said you started to cut under the counter of the "Coolidge"?

A. Yes sir.

(Testimony of Norman R. Arthur.)

Q. About how far under?

A. Oh, I was within, say, about six or eight feet of the rudder, of where the rudder-post is.

Q. So there was quite an overhang up above you?

A. Not so much, sir.

Q. And were you entirely under the counter when this garbage fell on you?

A. Yes sir.

Q. Still about six feet from the rudder?

A. Well, approximately that distance; I wouldn't say for sure. [104]

Q. And about how long did it take you to clean this stuff out of your eyes so that you could see?

A. Oh, I don't think it would take me over half a minute or so, just enough to wipe my eyes.

Q. I might ask it this way: Where was your boat when you finally could see?

A. I was approximately 50 or 60 feet over, maybe 50 feet from the stern of the boat.

Q. And about what speed were you traveling at that time?

A. Around eight knots.

Q. Well now, isn't it a fact that you didn't see anybody throw anything on you?

A. I did not see it, no.

Q. You don't know whether it came out of a chute or whether it came out of a bucket?

A. I know it didn't come out of a chute.

Q. How do you know?

(Testimony of Norman R. Arthur.)

A. For the simple reason if it came from the chute there would have been water dripping from the chute.

Q. Isn't it a fact that this was practically all water, that there was hardly any solid garbage?

A. There was garbage, yes sir.

Q. Well, how much water was there?

A. That's a pretty hard thing to guess.

Q. Was it a quarter of water and three-quarters solid garbage, or what?

A. I won't make no statement on that, because I don't know.

Q. When you looked up, when you finally got your eyes cleaned up and looked up and saw this fellow, you say it was a Chinese fellow?

A. Yes sir. [105]

Q. What kind of shoes was he wearing?

A. I don't know; I couldn't see them.

Q. You testified about the rest of his clothes?

A. Well, you've got only a little vision of a man.

Q. And you were about 60 feet away at that time?

A. Pretty close to it.

Q. You testified about this bucket you claim he was carrying?

A. Yes sir.

Q. What color was the bucket?

A. Kind of dark like.

Q. Kind of dark like?

A. Yes sir.

(Testimony of Norman R. Arthur.)

Q. What kind of handle did it have on it?

A. That's something my eyes are not good enough to see that far.

Q. Then how did you know what size the bucket was?

A. Just judging from other buckets that I have seen.

Q. This sampan that you were in, can you give us an idea of the dimensions of that boat?

A. It's a 28 foot sampan.

Q. What's the beam?

A. The beam is around five feet.

Q. And where were you standing at the time the garbage^s was dumped on you?

A. I was standing at the tiller of the boat.

Q. Is that one of these arm tillers, or is it a wheel?

A. No sir, it's a wheel.

Q. And how far from the stern is that wheel?

A. Around eight feet.

Q. How far from the bow? [106]

A. I don't think it's more than—it's practically right in the middle of the boat, that's what it is.

The Court: Were you standing or sitting when this occurred?

A. I was standing.

Mr. Russell: And that sampan, is that the typical fishing type of sampan we see around the harbor?

A. It is built on the fishing type, yes sir, but it has accommodations in the stern for passengers.

(Testimony of Norman R. Arthur.)

Q. As you were standing at the tiller, how far below the outside edge, the top of the outside edge of this sampan, would your feet be? Do you understand what I mean?

The Court: Well, I don't.

A. No, I don't.

Mr. Russell: Perhaps I could illustrate on this blackboard. Let us say that these are the edges of the sampan; you were standing in the center, you say?

A. No sir; the steering wheel is more over to your right.

Q. This way (indicating on diagram)?

A. More over yet, sir.

Q. This level, the deck level that you were standing on, how far is it below this edge, indicating the outside edge of the sampan, the top edge?

A. About a foot.

Q. Did you clean up this sampan after the garbage was dumped on you?

A. Yes, sir, I did.

Q. Did it personally?

A. Yes sir.

Q. How long afterwards?

A. Oh, I should say approximately 20 minutes or so afterwards. [107]

Q. Was that after you had seen the officer on the "Coolidge"?

A. Yes sir.

Q. Was this stuff splashed pretty well around in the sampan?

(Testimony of Norman R. Arthur.)

A. Yes sir, it was.

Q. I think you testified that you saw a Chinese boy walking away from the rail with a can?

A. Yes sir, I did.

Q. And how far away from the rail was he when you saw him?

A. He was only a few feet away from the railing.

Q. Didn't you say "about five feet" in your direct examination?

A. About around there, yes.

Q. And how far from the stern?

A. That I wouldn't say right off; I don't know.

Q. Did you see his face?

A. No sir, I did not.

Q. How did you know he was Chinese, then?

A. By the general garb of his clothes.

Q. In other words, it was purely a guess as to whether he was Chinese, or *haole*, or anything else?

A. No. You can tell by the general garb of his clothes and the color of his skin that he's no other nationality.

Q. What part of his skin did you see?

A. I seen his head and neck.

Q. You say you saw the color of his neck but couldn't tell the color of the can?

A. No, I can't, because it's a dark can, that's all.

Q. You testified that you changed your clothes before you went over to see anybody on the "Coolidge", is that right?

(Testimony of Norman R. Arthur.)

A. Yes sir, I did.

Q. You also testified that five minutes after this stuff was [108] dumped on your head you were on the "Coolidge"?

A. I was, yes sir.

Q. How could you proceed approximately from the stern of the "Coolidge" to the next dock, change your clothes, and get over on the "Coolidge" in five minutes?

A. Well, it can be done; if you don't think it can be done, you come down and I'll give you an illustration of how to do it.

Q. Are you sure just about the size of this bucket, the one you saw this fellow carrying?

A. Pretty sure.

Q. You're sure it was 10 gallons; isn't it a fact that it's nearer 5 gallons?

A. Well, it may have been, and may not, I won't say for sure; you know a man is not sure at that distance of a bucket.

Q. There wasn't five gallons of rubbish in your boat?

A. No; it was practically all in the harbor.

Q. And it hit you squarely on the head?

A. It hit me square on the head; and just if I hadn't acted as quickly as I did I'd have smashed Government property.

Q. If most of it was in the harbor, how did you know what it consisted of?

A. Because I picked up what was left of it on the stern of my sampan, which is a hollow pit.

(Testimony of Norman R. Arthur.)

Q. How do you know what proportion went into the harbor and what proportion went into the sampan?

A. I do not know.

Q. Could you indicate with your hands the approximate size of the container you saw the fellow carrying?

A. It looked to stand about so high (indicating).

[109]

The Court: Was it an ordinary tin pail, or was it a coal oil tin or something of that kind?

A. No sir, it was a round tin.

Mr. Russell: Will you show me that space again?

A. About so high (indicating).

Q. Indicating what—about 2½ feet?

A. No; about two feet, somewheres around there.

Q. Two feet high; and how wide?

A. That I couldn't tell.

Q. Isn't it a fact that you don't know positively whether anything went in the harbor or not; you couldn't see it, you're just guessing, aren't you?

A. What do you mean?

Q. You claim that some of this garbage went in the harbor?

A. Yes.

Q. Aren't you just guessing?

A. No, sir.

Q. How do you know?

A. I seen it with my own eyes afterwards when I was coming back to Pier 8 to go aboard; and orange peelings and cabbage does not sink, it floats.

(Testimony of Norman R. Arthur.)

Q. Where did you tie up at Pier 8?

A. I tied up at the end of the pier, by the stern of the "Coolidge"; I fastened my line to her stern line.

Q. And where was this garbage you claim came from the "Coolidge" at that time?

A. There was some on my sampan and some in the harbor there.

Q. I mean with reference to the "Coolidge", where was the stuff in the harbor?

A. It was drifting away from the "Coolidge".

[110]

Q. Drifting Ewa, or Waikiki?

A. Towards Sand Island.

Q. Straight astern, is that correct?

A. Yes sir.

Q. How far away?

A. Oh, I imagine it was about 15 or 20 feet away from the stern then.

Q. Just what did it consist of?

A. Orange peelings, celery,—

Q. Not what was on your sampan; what was in the harbor?

A. In the harbor, practically the same thing; you can't change vegetables from a sampan to the harbor.

Q. Will you enumerate the different vegetables you saw?

A. Yes, sir.

Q. Do so, then.

(Testimony of Norman R. Arthur.)

A. There was celery, orange peelings, and cabbage peelings, and tea leaves.

Q. You don't know whether they came from the "Coolidge" or not, do you?

A. I do.

Q. How; you couldn't see at the time you were hit?

A. There wasn't an airplane flying over my head to dump it?

Q. Isn't it possible that could have come from another ship?

A. It could not have.

The Court: Was there any other ship lying in that proximity?

A. No sir.

Mr. Russell: There was no ship at Pier 9?

A. There was the Coast Guard ship, yes sir.

Q. How about Pier 10 and Pier 11?

A. I don't remember that now. [111]

Q. After you went on board the "Coolidge" did you see this Chinese fellow who, you claim, was carrying the bucket?

A. I did afterwards, yes sir.

Q. How do you know it was the same one?

A. Well, I wouldn't say it was exactly the same one, but just from the general garb of his clothes; if it had've been the same one I'd have put him under arrest right then.

Q. If it had been?

A. Yes sir.

(Testimony of Norman R. Arthur.)

Q. Then you don't know whether it was the same one or not?

A. No sir.

Mr. Russell: No further questions.

Redirect Examination

By J. F. McLaughlin, Esq.:

Q. At the time, Mr. Arthur, that this rubbish landed on you and part of your sampan you say you were rounding the counter of the "President Coolidge"?

A. Yes sir.

Q. What do you mean by the "counter" of the "President Coolidge"?

A. Well, on a boat you got the stern of the boat, and the stern of the boat has a flare to it, and we call that a counter.

The Court: It projects out over the water for a certain distance?

A. Yes sir.

Mr. McLaughlin: And with reference to that counter, were you underneath it?

A. I wasn't clear underneath, no sir; I was going right by the stern of the boat, I just had cut by the counter with the bow of my boat, just cut under; I wasn't clear [112] under the counter, no sir.

The Court: Had you been under the counter, or were you going under the counter?

A. I was just passing the stern of the boat, sir.

The Court: Well, had you gone underneath the counter, or were you emerging from the counter?

(Testimony of Norman R. Arthur.)

A. I had just started to come out, yes sir.

The Court: You had been under the counter and you had just started to come out, is that right?

A. Yes sir.

Mr. McLaughlin: And it was at that point of time that you were hit with this rubbish?

A. Yes sir.

Q. Now, with reference to this individual whom you say you saw shortly thereafter walking on the deck with a pail, garbed in clothes indicative of his being a Chinese person, you say you didn't see his face?

A. No sir, I didn't.

Q. And by that statement do you mean that you didn't see the front view of his face?

A. No sir, because he was walking away from me.

Q. As he was walking on that occasion did you see one side of his face?

A. No, I can't remember that; I just seen from his back, that's all I seen; he was walking away from me toward the bulkhead there.

Q. When you said that when you were making the investigation on the "President Coolidge" with the chief mate that if this individual whom you saw had been the individual that [113] threw the rubbish over you'd have arrested him, just what did you mean by that?

A. I'd have gone to my superiors and they would have got the man and put him under arrest for doing that offense.

(Testimony of Norman R. Arthur.)

Q. Well, with reference to the person's identity, why weren't you sure that this was the same individual that you had seen walking away with the pail in his hand?

A. Because there's so many of them aboard that are dressed in the same kind of clothes, that's why; you can't identify a man by that way.

Q. But did this particular man have on the same type of garments as the man you had seen walking away with the pail?

A. Yes sir.

Q. Are you familiar with the garments of Chinese employees who work on ships?

A. Yes sir.

Mr. McLaughlin: That is all.

The Court: No further questions, gentlemen?

Mr. Russell: I believe not, Your Honor.

The Court: You'll be excused, Mr. Arthur.

PHILIP D. FUNTES

being first duly sworn as a witness for the Libellant, testified as follows:

Direct Examination

By J. F. McLaughlin, Esq.:

Q. Your full name, please?

A. Philip D. Futes.

Q. And what is your occupation at the present time?

(Testimony of Philip D. Funes.)

A. United States Coast Guard.

Q. And you are connected with what Coast Guard vessel? [114]

A. 838, patrol boat.

Q. Were you a member of the Coast Guard of the United States on August 26, 1937?

A. Yes.

Q. Were you connected with this same Coast Guard boat on that date?

A. Yes.

Q. On August 26, 1937, in the forenoon of that day, where was this Coast Guard boat 838?

A. It was tied up at Pier 7.

Q. For what purpose was it tied up at Pier 7, if you know?

The Court: Here in Honolulu harbor?

A. Yes sir.

Mr. McLaughlin: For what purpose was it tied up at Pier 7 in Honolulu harbor?

A. To prevent smuggling and throwing things over the side.

Q. Were you on duty in the forenoon of this day?

A. Yes.

Q. What were your duties?

A. My duty was to watch that nothing was thrown overboard from the "President Coolidge" from the bow to the stern.

Q. And for the discharge of that duty where were you stationed on this occasion?

(Testimony of Philip D. Funtès.)

A. At the present moment I was right about pretty near to the stern; I was walking down——

Q. The stern of your Coast Guard vessel?

A. She was tied up down at the end.

Q. At the end of Pier 7?

A. Yes.

Q. On this date, August 26, 1937, the forenoon thereof, [115] while you were discharging your duties as a Coast Guard employee, did you see anything thrown from the stern of the "President Coolidge"?

A. Before or after he was hit?

Q. Well, did you see anything thrown?

A. No, I didn't see anything.

Q. Did you see Mr. Arthur on that day, in the forenoon of that day?

A. Well, I seen him a couple of times running up and down before that.

The Court: Before what; what are you talking about?

A. Before that time, before 9:30.

Mr. McLaughlin: Did you see Mr. Arthur within the vicinity of the steamship "President Coolidge" on that day?

A. Yes sir, I did.

Q. And while he was in the vicinity of the "President Coolidge" did you see him hit with anything?

A. Yes sir.

Q. Will you describe that, please?

(Testimony of Philip D. Funes.)

A. While he was coming towards this way and he was right underneath the stern, some garbage was dumped on him.

Q. Did you see it actually hit him?

A. Yes sir.

Q. Did he thereafter have a conversation with you?

A. Well, when the stuff was dumped on him the boat swerved into the pier and he was wiping the stuff off, and I had to laugh about it, and he came over to me and asked me if I had seen it, and I said I did; he asked me if I wanted to be a witness; I said "Sure".

Mr. McLaughlin: You may cross-examine. [116]

The Court: What time does this ship leave here on schedule this afternoon?

Mr. Bowman: Six o'clock.

The Court: I hope we'll get through as quickly as we can.

Cross Examination

By J. P. Russell, Esq.:

Q. Mr. Funes, will you tell us again just what you were doing on this morning in question just before this happened?

A. Well, my duty was to watch that nothing was thrown over the side, like packages or something like opium, or something like that.

Q. Off the "Coolidge"?

A. Off the "Coolidge".

(Testimony of Philip D. Funtès.)

Q. And didn't you testify when first asked by counsel that you did not see anything thrown from the "Coolidge"?

A. Before that, yes sir, I didn't see anything thrown over.

Q. But you did see something hit Mr. Arthur?

A. Yes sir.

Q. Well now, when was the first time that you looked over towards Arthur?

A. Well, I was looking direct at him when he was coming.

Q. How does it happen you did see this garbage hit him and yet not see it thrown?

A. Well, I wasn't watching the deck.

The Court: You're twisting him there, Mr. Russell; I didn't so understand the witness; I'm sure you don't want to be unfair; but just let the witness tell in his own words, if you don't object, as to what he did see and when.

Mr. Russell: Will you describe in more detail just what you did see from the time you first saw this sampan appear [117] near the stern of the "Coolidge"?

A. You mean the man's boat?

Q. Yes; take it up in detail.

A. Well, from where I was standing I couldn't see it until he came right direct on the stern, then I was watching him, so everything was timed; as soon as he was on the stern, down came the garbage, everything was timed so right; I wasn't watching the top deck, I was watching at him.

(Testimony of Philip D. Funes.)

The Court: Did you see where the garbage came from, Mr. Funes?

A. It came over the rail; it must have come over the rail.

The Court: You saw that, did you?

A. Yes sir.

The Court: You saw it descend, seen it coming down?

A. I seen it coming half-way down.

Mr. Russell: Did you look up to see where it came from after you saw it coming down?

A. No sir.

Q. You weren't interested in that?

A. No sir.

Q. Did it land right square on his head?

A. Yes sir.

Q. About how much garbage was there, do you remember?

A. Well, about half a bucket, maybe more.

Q. And what size bucket, would you say?

A. I can't tell you.

Q. Did it look like about a gallon of garbage, or more near five gallons?

A. Well, I wasn't in this boat and I couldn't describe how much garbage there was.

Q. You didn't see any garbage in the water, did you? [118]

A. No, from where I was standing I couldn't see it.

Q. When he came over in his boat was there quite a bit of garbage in it?

(Testimony of Philip D. Funtles.)

A. Well, there was quite a bit in it; he was still cleaning the garbage off of him.

Q. And how long did he remain tied up near you?

A. Oh, say about 50 seconds; he asked me if I would be a witness; I said, "Sure"; then he turned around and went around the corner, and I didn't see him after that.

Q. Around which corner?

A. Around the "Coolidge"; the "Coolidge" sticks away out and I couldn't see through.

Q. Did he change his clothes while he was tied up near you?

A. Not while I was there.

The Court: Was he tied up; is there any evidence to that effect?

Mr. Russell: I'm not sure.

Q. I mean; while he was talking to you, he didn't change his clothes?

A. He couldn't be talking to me and changing his clothes; I didn't see it.

Q. He asked you to be a witness?

A. He asked me if I had seen the garbage, and I said "Sure".

Q. Then he asked you to be a witness?

A. Yes sir.

Q. Did he say what for?

A. Well, I knew what for.

Q. You knew what for?

A. Yes sir.

(Testimony of Philip D. Funes.)

Q. Did you pay any more attention to the event after he had [119] disappeared around the stern of the "Coolidge", did you watch the rear deck of the "Coolidge" at all?

A. No sir; I walked up forward then.

Q. What kind of a day was it; was it windy that day, or calm?

A. Well, I can't remember; I can't tell the days; some days is windy, some days is calm; I know the harbor was calm.

Q. Did you talk to anybody about this before you testified?

A. Well, I told the skipper of my boat.

Q. Any one else?

The Court: Who is the skipper on your boat?

A. Gordon Gernhart.

The Court: What's his rank?

A. First class bo's'n's mate, sir.

The Court: Bo's'n's mate?

A. First class.

Mr. Russell: Did you talk with Mr. McLaughlin about this before the trial?

A. No sir.

The Court: (indicating): This gentleman here, this lawyer?

A. Yes sir, I did; I was called up to the office.

Mr. Russell: No further questions.

Mr. McLaughlin: That's all. That's the case for the Government.

(Recess—11:55 a. m. to 2:33 p. m.)

Mr. McLaughlin: Ready for the Government.

Mr. Bowman: Ready for the Libellee.

(Testimony of Philip D. Funtès.)

The Court: All right; proceed.

Mr. Bowman: Before proceeding with our case, may we at this time move to dismiss the Libel. It isn't necessary that [120] we argue it if the Court doesn't care to listen.

Our grounds are: (1) That there's no evidence that the vessel was used or employed in the violation of the Act. Those are the terms used in the Act, "used or employed", that the vessel was "used or employed", then it is the subject of the fine, assuming that the facts have been proven. The second ground of the motion is that there is no evidence that any refuse was thrown, discharged, and deposited from or out of the vessel into the navigable waters. Our contention is that the evidence is insufficient for a Court to find that there was a discharge into navigable waters.

The Court: What does that ground contemplate, Mr. Bowman: that the water where the alleged throwing of refuse occurred was not navigable water, or——

Mr. Bowman: No; that there was not a discharge into any waters; there was a discharge upon a person and into a boat; and, believing the testimony of one witness that he saw some refuse floating around in the water some 20 feet away from the "Coolidge", there's been no identification of that refuse with refuse which was alleged to have been thrown from the vicinity of a deck on the "President Coolidge".

(Testimony of Philip D. Funtès.)

The Court: Yes, I get the point you make; but the question in my mind was whether you were making a claim that this had not been shown to be navigable water.

Mr. Bowman: We can concede that.

The Court: Is the port of Honolulu, the harbor itself, necessarily as you say conceded to be navigable water?

Mr. Bowman: Yes. I'll not argue the point further, unless the Government desires to present its side of the case at this time. [121]

The Court: The Court doesn't desire to hear argument on the motion, Mr. McLaughlin; it isn't necessary. The Court will deny the motion on the ground that the Government has established by the evidence a prima facie case against the defendant.

Mr. Bowman: And may we have an exception.

The Court: Exception will be noted.

Mr. Bowman: I'll proceed with the Libellee's case, then, and call as my first witness Mr. Gjødsted.

CHARLES BROOK GJEDSTED

being first duly sworn as a witness for the Libellee, testified as follows:

Direct Examination

By A. G. Bowman, Esq.:

Mr. Bowman: Before starting an examination of this witness I'd like to correct the statement; I'm calling him as our second witness.

(Testimony of Charles Brook Gjedsted.)

The Court: Yes; that will not be used against you in the trial.

Mr. Bowman: I merely wanted to correct the statement I made.

Q. What is your name?

A. Charles Brook Gjedsted.

Q. And your residence?

A. Is in the United States, on the West Coast of the United States, California.

Q. And what is your present occupation?

A. Third Officer of the "President Coolidge".

Q. And what license do you hold?

A. Second Mate.

Q. And how long have you held the latter license?

A. Since April, 1936. [122]

Q. How long have you been on the "President Coolidge"?

A. Since March, 1937.

Q. And you have been on the "Coolidge" from then up to the present time?

A. Yes.

Q. In what capacity?

A. Third Officer.

Q. And your employer is the Dollar Steamship Company?

A. It is.

Q. And how long have you been in their employ?

A. Since 1930.

Q. On board ship since then, the entire time?

(Testimony of Charles Brook Gjedsted.)

A. Yes.

Q. In different capacities?

A. Yes.

Q. As Third Officer on the "Coolidge" what are your duties?

A. Do you want my duties in port, or at sea?

Q. In port will serve the purposes of this examination.

A. Well, I am in general charge of the deck between the hours of 8 a. m. and noon, and 8 p. m. and midnight, unloading cargo and general welfare of the ship, excepting in the engine room.

Q. And you receive instructions and orders from what superior officers?

A. The Captain, through the Chief Officer.

Q. Do you recall when the "President Coolidge" was in port on August 26, 1937?

A. According to the log books it was, yes.

Q. In the port of Honolulu?

A. Yes. [123]

Q. And you're familiar with the fact that a libel has been filed against the ship by the United States, charging that refuse was thrown from the ship on that day into the harbor?

A. Yes.

Q. When did you first hear of the libel?

A. March 15, 1938, at 10 a. m.

Q. That was some time after the event occurred?

A. Two days ago, yes.

Q. Are you familiar with the rules and regulations, if any, concerning the dumping of garbage?

(Testimony of Charles Brook Gjedsted.)

A. Yes; there's a general rule, a Company order, that there should be no garbage dumped over the side in the harbor limits of any port.

Q. How long has that been in force?

A. As long as I have been in the Company.

Q. How are the orders put in force?

The Court: I can't hear you.

Mr. Bowman: What method is used in putting these instructions in force on the ship?

A. Well, they are passed by word of mouth to the Chinese and the American citizens on ship, and they are posted in notices on places where they'll do the most good, in galleys, near the slop chute, in two languages, English and Cantonese Chinese.

Q. And have you seen the notices posted?

A. I have.

Q. And were they posted on August 26, 1937?

A. Well, they've been posted, as I say, since I've been on the ship, since 1930.

The Court: You mean, ever since you were on the ship? [124]

A. On the ships; I have been on five or six ships; they all have them.

Mr. Bowman: Are there any other provisions, or regulations, with respect to the discharge of garbage?

A. Well, as I said, they are general orders.

Q. Anything in addition that you're familiar with?

A. Of course, we're told when we come on the ship as officers, we're given instructions in a num-

(Testimony of Charles Brook Gjedsted.)

ber of things, and that's one of them, that there should be no garbage dumped over the side.

Q. And you were on board the "Coolidge" on August 26, 1937, in the forenoon, after the ship arrived here?

A. I was on watch.

Q. Did you throw anything overboard?

A. No.

Q. Did you order any refuse to be thrown overboard?

A. No.

Q. Do you know whether anybody on the ship ordered any refuse to be thrown overboard?

A. No.

The Court: You do know, or you do not know; what did you mean by that?

A. I do not know of ordering any refuse to be thrown overboard.

Mr. Bowman: Do you know of your own knowledge whether anybody on the ship did throw anything overboard on that morning?

A. No.

The Court: That question and the answer are susceptible of different meanings. You asked him if he knows and he says "No"; does that mean he doesn't know, or that so far as [125] he knows nobody did throw anything over? I don't know what you do mean.

A. Well, I don't know of anyone ordering anything to be thrown overboard, no.

(Testimony of Charles Brook Gjedsted.)

The Court: Whether any refuse actually was thrown overboard, do you or do you not know?

A. No, I do not know.

The Court: That's what I was trying to get at.

Mr. Bowman: Did you see any refuse in the harbor in and about the "President Coolidge" on that morning, that was August 8th, 1937?

The Court: August 26th, was it not?

Mr. Bowman: Or on August 26th?

A. I do not remember. I have been in and out of Honolulu about ten times, but I don't remember of seeing any, no.

Q. On August 26, 1937, who was the Chief Officer?

A. Mr. Collins.

Q. Do you know where he is now?

A. He's Master of the "President Harrison".

Q. And do you know where he lives?

A. To the best of my knowledge—that is, at least five years ago he was a resident of California.

Mr. Bowman: That's all.

Mr. McLaughlin: No questions.

The Court: Thank you. You'll be excused, sir, if you have other business to take you outside. Perhaps if the evidence of this next witness is cumulative, or largely along the same lines, it may be stipulated that the witness would testify—there's no use calling a half dozen witnesses who testify to the same facts that the Third Officer did, it seems to me. [126]

Mr. Bowman: The Second Officer would testify to the same facts as the Third Officer. Mr. Holler is the Second Officer whom I just called.

The Court: Would it be stipulated, Mr. McLaughlin, that if sworn as a witness this witness would testify to substantially the same facts that the Third Officer had already testified to?

Mr. McLaughlin: Yes, Your Honor.

The Court: Does that meet the necessities of the case?

Mr. Bowman: Yes, in this instance it would.

The Court: What is your full name, please?

A. Dennis S. Holler.

The Court: So stipulated; and the stipulation will be noted of record. I think that'll do away with the necessity of your being interrogated, Mr. Holler.

Mr. Bowman: My next witness is Mr. Wood, and I might advise the Court that his testimony would be in effect the same as that of the preceding witnesses.

Mr. McLaughlin: I'll stipulate that the record may so show.

The Court: What is Mr. Wood's capacity aboard ship?

Mr. Wood: First Officer.

The Court: First Officer at the present time?

A. Yes.

The Court: In other words, you succeeded Mr. Collins?

A. No.

The Court: Anyway, you're in the same position now that he held?

A. No; he was Chief Officer, and I am First Officer at the present time.

Mr. Bowman: The Chief Officer is in between the Master and the First Officer. [127]

The Court: I see.

Mr. Bowman: And Mr. Wood was the——

Mr. Wood: First Officer of the “President Coolidge” at that time, junior to Mr. Collins who was at the time Chief Officer.

The Court: Well, of course, so far as substantially testified to by the Third Officer, it may be admitted, if it is so admitted, that this witness would testify to practically the same set of facts. The Third Officer testified that he was actually on duty at the time and had the watch; of course that would not be true as to this officer because there are not usually two officers on watch at the same time.

Mr. Bowman: That’s true.

The Court: And the Captain testified, of course, that he wasn’t on the ship, that he was off the ship most of the day.

Mr. Bowman: The testimony which I wanted from these witnesses pertains to the general rules and regulations and the posting of notices, and similar testimony.

Mr. McLaughlin: If it would simplify matters at all, I’m willing to stipulate that the Steamship Company and the Captain both issued instructions which were posted about the ship to the effect that while in port no rubbish should be thrown overboard; would that meet your requirements?

The Court: And further, the last witness testified that this order was given by word of mouth to the Chinese and Americans.

Mr. McLaughlin: Yes, I'll even include that in my stipulation if it's desired.

Mr. Bowman: I would not want to stipulate as to any witness [128] other than the two who were last called. I have the Chief Steward, whose testimony I desire.

The Court: Well, you'll be permitted to call him to the stand; but as to Mr. Wood,—

Mr. Bowman: Perhaps as to this gentleman, we might agree that he would testify that the Company had instructed, that the Captain gave instructions to the effect that no rubbish should be dumped overboard while the vessel was in port, and that notices to that effect were posted, and that word was passed by word of mouth in addition, and that he did not order refuse to be thrown overboard.

Mr. McLaughlin: Yes.

Mr. Bowman: And had no knowledge of any refuse being thrown overboard.

Mr. McLaughlin: Yes.

Mr. Bowman: And, so far as he knows, refuse wasn't thrown overboard by anybody on the ship.

Mr. McLaughlin: All right.

The Court: That stipulation will be entered of record here; it's understood that Mr. Wood would so testify if called and sworn as a witness.

Reporter: What is your name, please?

A. Frank John Wood, recently of San Francisco, California.

Mr. Bowman: My next witness is Mr. Dougan, the Chief Engineer. His testimony will be substantially the same as the others, with additional facts which I wish to bring out.

The Court: The Court doesn't see any good purpose to be subserved by piling this evidence, cumulative evidence, one witness after the other, when it's not even disputed; counsel has stipulated. [129]

Mr. Bowman: I have authority for the proposition that we must by officers on board the ship make a showing, and that's a duty resting upon us,——

The Court: It seems to me you've made the showing——

Mr. Bowman: (continuing): by each officer, not one or two, but by all, so that there is no outlet for——

The Court: Proceed if you so desire; I'm trying to save time.

Mr. McLaughlin: May I suggest that I would be willing to stipulate as to each the same as I stipulated as to Mr. Wood, and that you can begin questioning from that point on.

Mr. Bowman: That will be satisfactory.

The Court: So understood. Call the Chief Engineer.

WILLIAM ALLEN DOUGAN

being first duly sworn as a witness for the Libellee, testified as follows:

Direct Examination

By A. G. Bowman, Esq.:

Q. Your name, please?

A. William Allen Dougan.

Q. You are now Chief Engineer on the "President Coolidge" and were such on August 26th, 1937?

A. Yes.

Q. And have been for a considerable length of time?

A. Yes.

Q. In your department what provisions are there with respect to disposal of refuse?

A. In the engine-room we have containers for such refuse as oily rags; and then of course all other refuse, which would be brickwork or maybe pieces of machinery, as a rule is taken out on the dock when we're in the home port; but that's about [130] all the refuse that we have from the engine-room.

Q. And the instructions in that respect?

A. We have circular letters of course that there'll be no refuse dumped in any waters or inland harbors.

Q. Did you bring a circular letter with you?

A. I have a circular letter with me, yes, that I showed you this morning.

Q. Do you have that with you now?

A. Yes sir.

(Testimony of William Allen Dougan.)

Q. Could I see it?

(Witness hands document to counsel)

A. It's one of the many of which we receive.

Mr. McLaughlin: Mr. Bowman, would it be at all helpful if I would stipulate that this rubbish didn't come from the engine-room?

Mr. Bowman: I wanted to get this document in evidence——

The Court: Show it to Mr. McLaughlin.

(Counsel complies)

The Court: Will counsel state generally what that letter is. It's just a copy of these instructions that have been heretofore testified to, issued by the Dollar Steamship Company to the effect that no rubbish or garbage shall be dumped overboard into the harbor where the vessel may be lying?

Mr. Bowman: Yes; and attached to it—I'm introducing the copy just made under the directions of the witness this morning; he wishes to keep the original, he has no copy of that; and I have attached to the copy the notice which was attached to the original circular; and I at this time wish to offer in evidence the copy which the witness has——

The Court: Copy of an original order that was issued by the [131] Company, is that correct?

Mr. Bowman: Yes.

The Court: Signed by whom?

Mr. Bowman: J. L. Lounsberry, of the Dollar Steamship Lines; and this is the original circular,

(Testimony of William Allen Dougan.)

the only one the Engineer had; I wanted to bring out the fact that there have been similar instructions sent to him subsequently.

The Court: Any objection to the copy being received instead of the original, Mr. McLaughlin?

Mr. McLaughlin: No objection.

The Court: The copy that is offered in evidence will be received and marked——

Clerk: "Libellee's Exhibit No. 1."

The Court: And is it stipulated that that is a copy of an old regulation and that there have been later regulations issued to the same effect?

Witness: Your Honor, may I ask a question?

The Court: Certainly.

Witness: The only reason I wish to retain this, it shows that I have instructed each of my officers, and I want to keep some sort of a record.

The Court: Yes, that's perfectly all right.

Mr. Bowman: Mr. Dougan, will you state briefly the nature of these instructions and, further, as to whether or not they have been issued subsequently and continuously by the Steamship Company?

The Court: I understood that was stipulated, a part of the stipulation. Counsel is being ultra careful, it seems to me, in getting perhaps unnecessary matters before the Court in so many different phases. [132]

Mr. Bowman: If it's unnecessary, then I'll withdraw the question.

The Court: Is it so stipulated, Mr. McLaughlin?

(Testimony of William Allen Dougan.)

Mr. McLaughlin: Yes, Your Honor. I thought perhaps it might be a little different instructions, and I didn't know the purpose of it.

The Court: The stipulation is of record.

Mr. Bowman: Now, Mr. Bowman, as Chief Engineer of the "Coolidge" you are familiar with the plan of the ship and its build and the outside surface of the ship, are you?

A. Yes.

Q. Will you explain or describe the aft of the ship, that is, the counter?

A. On the blackboard?

Q. Briefly, yes.

A. (sketching on blackboard): This is the deck where the garbage was presumed to be thrown over, and this would represent the water-line here; there's a sort of fin comes out—

The Court: I didn't get that.

A. A fin, called a "shark's fin" in naval construction, and from this height here to the water-line is 28 feet, and from this point parallel to here is 23 feet.

Mr. Bowman: That's the testimony I wanted.

The Court: Can you point out to me approximately where the galley would be located there on that diagram you've made; that refuse chute is in the aft part of the ship, is it not, right near the stern of the ship?

A. Yes sir; that is, one the galleys is there.

The Court: You heard the testimony this morn-

(Testimony of William Allen Dougan.)

ing of the [133] witnesses who said that certain refuse was thrown overboard from the stern of the ship, did you not, Mr. Dougan?

A. Yes sir.

The Court: Well, how far is the galley from that point the witness indicated as the point where the garbage was dumped or was thrown over?

A. Probably 25 feet.

The Court: How many galleys are there aboard ship?

A. Three.

The Court: Well, which particular one is this?

A. This would be the steerage galley.

The Court: For the steerage passengers and crew?

A. Chinese crew.

The Court: Chinese crew and steerage?

A. Chinese crew and steerage.

The Court: And in August of last year was that manned by Chinese help?

A. As far as I know, it was all Chinese help.

The Court: At that time?

A. Yes sir.

The Court: Cooks, stewards, white boys, and all?

A. Well, there may have been white supervision back there, I don't know; it's not in my department.

The Court: To the best of your observation, then?

(Testimony of William Allen Dougan.)

A. Chinese.

The Court: All right; that's all.

Mr. Bowman: One further question. Can you tell us where the rudderpost is?

(Witness sketches)

Q. And what is the distance from the rudderpost to a line [134] representing a drop from the port most aft on the ship?

A. 35 feet.

Mr. Bowman: That's all.

Mr. McLaughlin: No questions.

Mr. Bowman: My next witness is Mr. Bissel.

ALAN L. BISSEL

being first duly sworn as a witness for the Libellee,
testified as follows:

Direct Examination

By A. G. Bowman, Esq.:

Q. What is your name, please?

A. Alan J. Bissel.

Q. And where do you reside?

A. San Francisco.

Q. What is your present occupation?

A. Chief Steward on the "President Coolidge".

Q. And you were such on August 26, 1937?

A. Yes.

Q. And how long have you been Chief Steward on the "Coolidge"?

(Testimony of Alan L. Bissel.)

A. Since August 14th.

Q. Of what year?

A. 1937.

Q. The Dollar Steamship Lines is your employer?

A. Yes.

Q. And how long have you been employed by the Steamship Company?

A. Since February 5th, of 1937.

Q. And from whom do you receive your instructions?

A. From the Port Steward and by circular letters from the Port Steward; at sea, from the Captain. [135]

Q. Do you have your records with you?

A. Circular letter file book, yes.

The Court: Is this the same as the other letter, Mr. Bowman?

Mr. Bowman: It's different; this is a circular letter directed to the Chief Steward on board the ship.

The Court: From the Port Steward, or what?

Witness: Yes, from the Port Steward.

Mr. Bowman: This is a copy of the original which is in Mr. Bissel's book; the United States Attorney has no objection to it going in evidence.

Mr. McLaughlin: That is correct.

The Court: Without objection—are you offering it in evidence; that would be a preliminary.

Mr. Bowman: I offer it in evidence.

(Testimony of Alan L. Bissel.)

The Court: It will be received as Libellee's Exhibit 2, without objection. Will you indicate just the general nature of that instruction; I take it it's about the—along the same lines as the other, is it not?

Mr. Bowman: He is familiar with the facts, more so than the others.

The Court: Well, let him tell it. That instruction relates to the throwing of refuse into the harbor, does it, Mr. Bissel?

A. Yes, refuse and garbage.

The Court: Enjoining upon you and your department not to throw refuse into the waters of the port where you may be lying?

A. Yes sir, at two different times.

The Court: It is signed "O. H. Smith"; who is O. H. Smith?

A. Port Steward.

The Court: In San Francisco? [136]

The Court: The Port Steward is considered to be and is the head of the stewards' department in all ships that are out at sea, and so forth?

A. Yes.

Mr. Bowman: Have you received similar instructions from time to time?

A. Yes; there are two here in this book and in another one that is not here that I know of that are out over a period of five years regarding the matter.

Q. What are your duties as Chief Steward, in brief?

(Testimony of Alan L. Bissel.)

A. In charge of the catering, general housekeeping and cuisine of the whole ship, both passengers and crew.

Q. And how many persons are under you?

A. 237.

The Court: You have general charge of the galley, the kitchen, as well.

A. The rooms and the crew quarters and stores.

The Court: I mean the cooks, the chefs, they come under your department too, do they?

A. Yes.

Mr. Bowman: The "President Coolidge" was in the port of Honolulu on August 26, 1937?

A. Yes.

Q. And you're familiar with the fact that libel has been filed against the ship?

A. Yes.

Q. Regarding the deposition of garbage?

A. I heard that it was, the afternoon that we sailed.

The Court: That you sailed from San Francisco?

A. That we sailed from here. [137]

The Court: Oh, the day that it occurred, the dumping of the refuse?

A. Yes.

Mr. Bowman: You say you learned on that day?

A. Yes.

Q. How did you learn of it?

A. The Purser told me.

Q. What did you do as a result of hearing?

(Testimony of Alan L. Bissel.)

A. There wasn't anything I could do, as I had already made the investigation in the morning regarding the dumping of the garbage—or the alleged dumping.

Mr. Bowman: Well, that's the fact I wanted to bring out, not the fact of the libel, but the fact that there was——

The Court: Well, ask the question, please.

Mr. Bowman: I'll withdraw that.

Q. When did you first hear of the alleged dumping?

A. About 10 to 10:30 on the morning of the 26th the Chief Officer came along to my room and told me.

Q. And what did you then do?

A. I immediately went aft where it was supposed to be dumped and looked, and I could see no garbage in the harbor or in the water around there. I questioned the cooks and the Chinese boys that were there, and sent for Number One boy and had him go all through the department asking all the Chinese boys; you see, a lot of those boys don't savvy much if they don't want to.

The Court: He was speaking in Chinese?

A. To the Chinese.

The Court: You don't understand Chinese, do you?

A. No sir. I was speaking in English to the Number One boy. [138]

(Testimony of Alan L. Bissel.)

The Court: I say, the Number One boy went around and spoke Chinese to the people who were working under his general charge?

A. Yes.

The Court: And you didn't understand what he said, of course?

A. No, not in speaking Chinese. I also asked all of my mess boys, of which we have 12 on the ship that have occasion to dump garbage from their mess-rooms after meals; they are white boys; and they had not dumped any or seen any dumped or heard of any being dumped. The same information I got from the steerage galley gang when I asked them personally.

Mr. Bowman: Is the Number One Chinese boy on the ship now?

A. No.

Q. Where is he, do you know?

A. He got off in Hongkong this time; we put off all our Orientals there.

Q. You have no Chinese on board now?

A. Only Chinese-American citizens.

Q. Did you order anything to be thrown over-board?

A. No.

Q. Are you familiar with any rules and regulations of the Company with respect to the dumping of garbage?

A. Yes.

(Testimony of Alan L. Bissel.)

Q. And what are they?

The Court: That's all been gone into so often; won't it be stipulated—

Mr. McLaughlin: We can stipulate as to the rules.

The Court: You've had at least six or eight witnesses testify to these regulations and the posting of the orders and so forth. Will it be stipulated that this witness would [139] testify to the same general effect?

Mr. McLaughlin: Yes, Your Honor.

Mr. Bowman: If the Court please, I'd like to offer in evidence through this witness a copy of the notice which is posted. I didn't wish the stipulation to cover that phase of the case.

Q. Do you have a notice that is posted on the ship? (Witness hands counsel a framed document under glass)

Q. I now show you what purports to be a notice. Will you look at that and tell us what it is?

A. It's a notice put out by the Company, printed in both English and Chinese, and posted at our garbage chutes where garbage might be thrown overboard, to the effect that it is strictly against Company rules to throw slops or refuse overboard during the vessel's stay in port. "Any deviation from these instructions will be severely dealt with." Signed "Dollar Steamship Lines, Inc., Ltd."

The Court: You were reading from the top portion of that, that's in the English language?

(Testimony of Alan L. Bissel.)

A. Yes sir. Of course this in Chinese I don't know.

The Court: Of course in Chinese you don't know one character from another?

A. No.

The Court: You're assuming that the bottom part of that notice is the same as the top portion?

A. Yes. As the instructions are in the book to the Steward to have them printed in both English and Chinese. These were printed before I came on the ship.

Mr. Bowman: Where are those notices posted?
[140]

A. In close proximity to all garbage chutes.

Q. And you have personal knowledge of that?

A. Yes.

Mr. Bowman: (After exhibiting notice to opposing counsel): I offer this notice in evidence as Libellee's Exhibit 3.

The Court: Any objection?

Mr. McLaughlin: No objection, Your Honor.

The Court: It will be received without objection and marked

(“Libellee's Exhibit No. 3”)

Mr. Bowman: In order not to encumber the record I might read this into the record, the English, unless the Court would desire to have a translation made of the Chinese,—

The Court: I have no desire. I wouldn't desire in the matter one way or the other; you're in charge of the proof.

(Testimony of Alan L. Bissel.)

Mr. McLaughlin: I am willing to stipulate that I'll take your word for the fact, or the witness' word for the fact that, as far as he knows, the Chinese says what the English says.

The Court: Is that stipulation satisfactory?

Mr. Bowman: Yes, that's satisfactory. And may I now read into the record the notice in English?

The Court: If you so desire. You're withdrawing that——

Mr. Bowman: I'm withdrawing that——

The Court: That offer of the document in evidence——

Mr. Bowman: And reading the same into the record.

The Court: Well, go ahead; proceed.

Mr. Bowman: (reading):

“Do not throw garbage or refuse overboard while in port. It is strictly against Company rules to throw slops or refuse overboard during a vessel's stay in port. Any deviation from these instructions will be [141] severely dealt with.

Dollar Steamship Lines, Inc., Ltd.”

The Court: It is stipulated, as I understand that the Chinese characters underneath that English are practically to the same effect.

Mr. McLaughlin: Convey the same meaning.

The Court: That the witness would so testify if a witness were called—an expert.

Mr. McLaughlin: Yes, Your Honor.

(Testimony of Alan L. Bissel.)

Mr. Bowman: Before the ship's arrival in Honolulu on August 26th, 1937, did you carry out any instructions personally with respect to garbage disposal?

A. Yes; the locking of the garbage chutes in the galley is always in charge of the chef; and the night before, I instructed him to see that they were locked the first thing in the morning before entering port; also, the one in the crew galley is in the charge of the third steward; I instructed him to do the same thing. The first thing next morning before entering port I went around to see that they were locked—

The Court: Well, were they locked?

A. Yes, and they were locked. I also told the third steward and the different department heads to warn their mess boys and their cooks regarding throwing garbage overboard in port, which we make it customary to do in entering every port.

Mr. Bowman: After you were notified of the alleged dumping did you re-inspect the garbage chutes?

A. Yes; after going back aft to the Chinese galley where the dumping is supposed to have taken place, I tried to find out as mentioned a few minutes ago; and then went down to make sure that the chutes were still locked in the [142] galley which they were.

Mr. Bowman: All chutes?

A. Yes.

(Testimony of Alan L. Bissel.)

Q. You stated that after receiving notice of the alleged dumping you went aft on the ship?

A. Yes.

Q. What did you find there with respect to containers, or the like, for garbage disposal?

A. Well, the usual garbage containers were there which we have in port; there were five or six drums at that time; two of them were empty, one had about a quarter full, one about three-quarters full, and one about half-full; so there was no reason to throw any garbage over the side because of the lack of containers.

The Court: That's a matter of argument, Mr. Bissel; you can simply state the facts.

Mr. Bowman: How large were the containers?

A. Oh, I would say they were about a 40 gallon drum.

Q. And whereabouts were those situated? You might show us on the diagram.

The Court: I don't think it need be marked.

A. They stood right here.

The Court: Indicating, on the first diagram that was drawn, just along the extreme stern of the ship.

A. Yes.

The Court: On what deck is that?

A. "B" deck aft.

Mr. Bowman: And you inspected those drums yourself?

A. Yes.

(Testimony of Alan L. Bissel.)

Q. On that day?

A. Yes. [143]

Q. Did you yourself throw any refuse overboard?

A. No.

Q. And did anybody to your knowledge order any refuse to be thrown overboard?

A. No.

Q. And to your knowledge was any refuse thrown overboard?

A. Do I know of any garbage being thrown overboard?

Q. Of your own personal knowledge, do you know whether or not any garbage was thrown overboard that day?

A. No, only that Mr. Collins told me——

The Court: Well, never mind what Mr. Collins told you.

A. No, I don't.

The Court: You don't know whether garbage was thrown overboard or not, is that your answer?

A. Yes sir.

Mr. Bowman: With respect to the Chinese boys, do you know whether or not they were instructed to deposit garbage in the receptacles provided on "B" deck?

A. They receive their instructions from Number One boy to that effect, besides these notices being posted in Chinese for them to read.

Q. And is there a notice on "B" deck aft?

(Testimony of Alan L. Bissel.)

A. Yes, in the galley, right where they keep their garbage; the garbage can sets right inside the galley door, that's used in the galley, and right over this door and the other door is this sign.

Q. The notice being the same one which was read into the record?

A. Yes; they're all uniform. [144]

Q. When you went aft on the ship after hearing of the alleged dumping did you inspect the water in the vicinity of the aft part of the ship?

A. I looked over the rail where Mr. Collins told me that the garbage——

The Court: By "the water" you mean the ocean?

Mr. Bowman: In the harbor, yes.

A. I looked over the rail at the place where Mr. Collins said that the garbage had been dumped.

Q. Did you see anything in the water?

A. No.

Q. What time was that, approximately?

A. About 10:30; between 10 and 10:30, I can't be sure; it was after 10:15 in the morning.

Q. In the morning of August 26th, 1937?

A. Yes.

Mr. Bowman: That's all.

Mr. McLaughlin: No questions.

The Court: That's all; you'll be excused, Mr. Bissel. Any other witnesses?

Mr. Bowman: No other witnesses. I have a deposition which I wish to introduce in evidence.

The Court: There were certain objections that were made during the course of the taking of the

deposition; I don't know whether they are insisted on or will be at this time renewed, I have no way of knowing. I have read the deposition, by Mr. Dale E. Collins, who was then the Chief Officer.

Mr. McLaughlin: May it please the Court, I have looked at this deposition in the Clerk's office some months ago; [145] I'm not too familiar with it at this moment, but perhaps if I had a few minutes to look it over I might agree that it go in without objection.

The Court: The Court will take a ten minute recess while Mr. McLaughlin familiarizes himself with the contents of that deposition.

(Recess—3:10 to 3:25 p. m.)

The Court: Does counsel wish to present argument in this matter?

Mr. McLaughlin: At the conclusion of the evidence I believe both counsel will; I know I will.

The Court: I guess we have the deposition yet to be introduced. Do you want to read that now, Mr. Bowman, or has Mr. McLaughlin—

Mr. Bowman: I offer a deposition taken on behalf of the Libellee, of the testimony of Dale E. Collins, formerly Chief Officer on the "President Coolidge",—

The Court: I've read the deposition as stated, I'm familiar with its contents. Any objection on the part of the United States?

Mr. McLaughlin: It being my understanding that the entire deposition is offered and not just part of it, I have no objection to its being received,

and as to the objections recorded in there made by an assistant United States Attorney in New York, on behalf of the Government I'll waive those objections.

The Court: On the statement of the United States Attorney, the deposition as a whole will be received in evidence and marked——

Clerk: "Libellee's Exhibit No. 3." [146]

The Court: And Mr. McLaughlin on behalf of the Government waives the objections that were noted by the representative of the United States Government who was present at the time of the taking of the deposition.

Mr. Bowman: The customary procedure, as I understand it, is to read the deposition at this time. I understand the Court has already read——

The Court: I have read the deposition.

Mr. Bowman: I don't know that it's necessary take the time of the Court——

The Court: I think I'm familiar with it; it's largely along the same lines and in accord with the evidence that's been offered here today, in fact, many of the points are practically the same.

Mr. McLaughlin: As to any right that I might have to have it read before the Court at this time, I'm willing to waive such right.

The Court: With that understanding the deposition will be received in evidence and to be considered by the Court as in evidence.

Mr. Bowman: The Libellee rests.

Mr. McLaughlin: The Government has no further evidence.

The Court: It's now 3:27; it seems to me that a very brief argument here would perhaps suffice. The Court has listened very carefully to the evidence from the stand here and has also read the deposition. How long a time would you suggest for argument?

Mr. McLaughlin: I think as far as Libellant is concerned we can cover the matter in about 10 or 15 minutes.

The Court: Would counsel be content to have the argument to [147] a side limited to 15 minutes, then?

Mr. Bowman: That would be satisfactory.

The Court: All right. Plaintiff will open; and the defendant to time his opening and closing as he sees fit.

Mr. McLaughlin: (Argument) * * *

The Court: Just one question before you begin your argument.

Mr. Russell: Do you contend or do you conceive it to be a defense to this charge here that the act, if it was committed, was committed in opposition to certain regulations of the Company or against certain instructions issued by the officers of the Company; or is that simply a matter that may be considered by the Court, perhaps, in mitigation to some extent?

Mr. Bowman: We feel that that matter is brought up before the Court to show that the steamship is not liable for the Act, that the vessel was not used or employed in a violation of the Act, not

merely because there were instructions and the like on the part of the Steamship Company, but because of those instructions in addition to the orders, the orders issued by the men in charge of the vessel, that there was absolutely no authorization for this act, that it was an act which was not within the scope of the employment of anybody on the vessel. (Argument) * * *

Mr. McLaughlin: (Argument) * * *

The Court: Under the facts in this case, I feel and so find that there has been a technical violation of this Act. I do not believe that it is a violation of such a serious nature as to require the infliction, we'll say, of the maximum penalty. I do believe that the words used in Sec. 412 of the Act must be construed in connection with the other provisions of the Act. Section 407 does not contain those [148] words; it simply makes it a misdemeanor, an offense, to dump refuse or to throw refuse into a harbor or navigable stream, navigable waters of the United States.

From the evidence in this case the Court finds that some person from the deck of the Steamship "President Coolidge" threw this refuse on to the head or part of it of the witness who occupied the stand here, the Government inspector, and that part of the rubbish—it doesn't appear what amount—went into the navigable waters of the United States; that also appears from the testimony of the witness, the inspector—what was his name——

Mr. McLaughlin: Arthur.

The Court: Arthur, yes. The Coast Guard man testified that he saw this rubbish descending from the deck of the ship when it was half-way down from the deck of the ship until the time it struck the head of Arthur; he didn't pretend to know how much if any went into the navigable waters. I am convinced the purpose of the Act and intent of the lawmakers was to keep the channels free and clear of all refuse and debris of any kind. There is a separate section of the Act here which relates to logs and lumber and articles of a large and more dangerous description, but there is no doubt in my mind that it was intended to apply to any form of refuse. The amount of the refuse might grow greater and greater on each successive occasion.

The Court finds from the facts that a technical violation of the Act has been committed, and finds the defendant guilty in this case. It is the judgment and sentence of the Court—or, rather, this being—

Mr. McLaughlin: An admiralty matter. [149]

The Court: This being an Admiralty matter, it is the decree of the Court that the defendant pay the minimum fine provided by statute, to wit, the amount of \$500.00, which is hereby assessed against it, together with the costs of this case.

Mr. Bowman: May we have an exception to the decision and decree of the Court.

The Court: Exception will be noted.

Mr. Bowman: And hereby give notice of our intention of appeal.

The Court: Exception noted; and the notice of appeal, of course, will be followed up in the usual manner provided by statute.

I hereby certify the foregoing to be a full and accurate transcript of my shorthand notes in the above entitled matter.

(s) OLAF OSWALD
Official Court Reporter [150]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK, U. S. DISTRICT
COURT TO TRANSCRIPT OF RECORD
ON APPEAL

United States of America,
Territory of Hawaii—ss.

I, Wm. F. Thompson, Jr., Clerk of the United States District Court for the Territory of Hawaii, do hereby certify the foregoing pages, numbered from 1 to 150 inclusive, to be a true and complete transcript of the record and proceedings had in said court in the above-entitled cause, as the same remains of record and on file in my office and I further certify that I am attaching hereto the original citation on appeal and that the costs of the foregoing transcript of record are \$6 and that said amount has been charged by me in my account against the United States.

In testimony whereof, I have hereto set my hand and affixed the seal of said Court this 16th day of May, A. D. 1938.

[Seal]

WM. F. THOMPSON, JR.,

Clerk,

U. S. District Court, Territory of Hawaii [151]

[Endorsed]: No. 8846. United States Circuit Court of Appeals for the Ninth Circuit. Dollar Steamship Company, Claimant of, and the Steamship "President Coolidge" her engines, boilers, machinery, tackle, apparel and furniture, Appellants, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court for the Territory of Hawaii.

Filed May 24, 1938.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.